Supreme Court, U.S.
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No._____

In the

Supreme Court of the United States

In re David and Kay Sieverding, Petitioners

David and Kay Sieverding
Plaintiffs-Petitioners
v.
Hall and Evans, LLC et al.
Defendants-Respondents

On Petition for Writs of Prohibition and Mandamus
To the United States Courts of Appeals
For the Tenth Circuit and DC Circuit

BRIEF OF PETITIONERS

David, Kay, Edward and (Minor)
Sieverding
641 Basswood Ave.
Verona, WI 53593
(608) 848 5721

Petitioners, pro se

QUESTIONS PRESENTED

Is it obstruction of justice and obstruction of a Supreme Court order if an Officer of the Court assumes a prosecutorial role in an indirect contempt action to financially benefit his client because such conduct was prohibited by the Supreme Court in Young v. United States ex rel Vuitton?

Is it obstruction of justice and obstruction of a Supreme Court order, if a federal judge orders an American citizen arrested, held, and taken by force across state lines without a warrant that states an Act of Congress by statute or a notice of criminal contempt meeting the requirements of Federal Rules of Criminal Procedure Rule 42?

Is it obstruction of justice and obstruction of a Supreme Court order, if a federal judge issues an injunction without following Federal Rules of Civil Procedure Rule 65?

Is it obstruction of justice and obstruction of a Supreme Court order, if a federal judge orders financial sanctions without identifying the sanctionable conduct as required by Rule 11c(3) or complying with the formats of Rule 52a and Rule 54a?

Is it obstruction of justice and obstruction of a Supreme Court order, if a federal magistrate judge and lawyers in a federal civil court proceeding engage in or solicit ex parte conferences about the merits or the procedures leading to a decision on the merits?

Is it obstruction of justice and obstruction of court order, if lawyers represent insurance companies

in a matter pursuant to an errors and omissions insurance contract, if the insurance companies have not registered with the state insurance regulators in the forum state?

Does the evidence contained within demonstrate obstruction of justice and obstruction of court order by the civil defense counsel?

Does the supervisory authority of the Supreme Court in this case mandate relief from judgment for the plaintiff and a striking of the defense pleadings resulting in the defendants being placed into default?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATEMENT OF CASE 4

A. The basis for mandamus is obstruction of justice 4

B. Evidence the Sieverdings acted in good faith 4

C. Evidence of involvement of insurance companies that sold errors and omissions insurance in Colorado but did not register with the Colorado Department of Insurance 5

D. Evidence of ex parte oral and written communications with the magistrate 6

E. Evidence of solicitation of ex parte conference with the District of Colorado judge 7

F. An injunction was issued without Rule 65 procedure and the Sieverdings were not allowed to contest the legal validity of the injunction thru the contempt of court process as described in TORY V. COCHRAN 125 S.Ct. 2108, 544 U.S. 734, 161 L.Ed.2d 1042 (U.S. 05/31/2005): 8

G. Evidence of assumption of prosecutorial role by a financially motivated lawyer: 10

H. Sample of evidence of threats by the defense counsel 10

I. City of Steamboat Springs published on the Internet that the Sieverdings were in contempt.... 11

J. Evidence of jailing ordered by Federal Judge Nottingham without a warrant that states an Act of Congress by Statute or Common Name or notice of criminal contempt meeting the requirements of Federal Rules of Criminal Procedure Rule 42..... 11

K. Description of financial award to the defense counsel..... 12

L. Garnishment and publication of non-final judgment..... 12

M. Continued Internet publications by defendant Steamboat Pilot..... 13

N. Refusal to docket..... 14

O. Development of case law undermining the Anti Injunction Act..... 15

P. District of Colorado prejudice against litigants without law licenses shows in statistical results 15

SUMMARY OF ARGUMENT 16

ARGUMENT 20

A. Supreme Court must use its supervisory powers when there is obstruction of justice and lower courts do not remedy..... 20

B. Court recognized its obligation in similar cases involving 4th Amendment violations..... 21

C. Use of injunctions against litigation, private prosecutors, sua sponte injunctions, and injunctions not meeting Rule 65 requirements facilitate injustice 21

D. Precedence of soliciting the court to deny its Canon III responsibilities risks others 22

E. Criminal extortion? 24

F. Felony witness intimidation? 25

G. Is an Injunction against a legal activity a Deprivation of Rights Under Color of Law? 26

H. Is jailing without the required procedural safeguards a Deprivation of Rights Under Color of Law? 26

I. Is a refusal to docket a Deprivation of Rights Under Color of Law? 29

J. Witness Retaliation by seizure of assets 29

K. Magistrate Schlatter's reports and all pleadings and reports endorsing it should be struck because of the ex parte contamination 31

L. Obstruction of court orders 35

M. Conclusion 38

RELIEF SOUGHT 39

Appendix A District Court order dismissing the District of Colorado case 02-cv-1950 Sieverding v. CBA et al a1

Appendix B 10th Circuit Affirmation of Order dismissing the District of Colorado case 02-cv-1950 Sieverding v. CBA et al a5

Appendix C District of Colorado order shifting attorney bills a9

Appendix D 10th Circuit affirmation of the attorney fee shifting a16

Appendix E District of Kansas memorandum order dismissing that action a23

Appendix F 10th Circuit affirmation of the Kansas dismissal a28

Appendix G District of Columbia Memorandum Order Dismissing the Complaints Sua Sponte a30

Appendix H The D.C. dismissal of the Sieverding Appeal a36

Appendix I Affirmation with modifications of injunction against litigation by 10th Circuit a39

Appendix J District of Columbia District Court sua sponte injunction against pro se litigation a50

Appendix K Denial of motion to withdraw mandate and instruction not to accept pleadings a60

TABLE OF AUTHORTIES

Cases:

Andrews v. Tacha, No. 07-CV-0200-CVE-FHM (N.D.Ok. 05/08/2007) 15

Deelen v. City of Kansas City, Missouri, No. 06-1896 (8th Cir. 10/19/2007) 15

Dickerson v. United States, No. 99-5525 (United States Supreme Court 06/26/2000) 2

Gaiters v. City of Catoosa, No. 06-5168 (10th Cir. 05/22/2007) 15

In re: Dirk Kempthorne Secretary of the Interior in his Official Capacity, Petitioner No. 03-5288449 F.3d 1265,2006. CDC.0000115 32-34

McNabb v. United States, 318 U.S. 332, 340 (United States Supreme Court 1943) 2

Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 864 (United States Supreme Court 1988) 33

Semtek International Inc. v. Lockheed Martin Corp. (99-1551) 531 U.S. 497 128 Md. App. 39, 736 A. 2d 1104 (United States Supreme Court 2001) 34-35

Senn v. Tile Layers Protective Union, 301 U.S. 468 (United States Supreme Court 1937) 20

Shelly v. Kraemer. 334 U.S. 1, (United States Supreme Court1948)..... 21

Steiner v. Concentra Inc., 03-N-2293 8/5/2004 "Order denying plaintiff's motion to recuse". P.5 15-16

Stull v. District Court of Pueblo County, 308 P.2d 1006, 135 Colo. 86 (Colorado Supreme Court 03/18/1957) 2,19,22

Tassian v. People, 731 P.2d 672 (Colorado Supreme Court 1987) 19,21,24

Tory et al. v. Cochran, 125 S.Ct. 2108, 544 U.S. 734, 161 L.Ed.2d 1042 (United States Supreme Court 2005)..... 8,9

Young v. United States Ex Rel Vuitto. 481 U.S.. 787, 107. 2124, 95 L.Ed.2d 740 (United States Supreme Court 1987).. ..2,18.21,36

Ward v. Village of Monroeville, Supreme Court 409 U.S. 57 (United States Supreme Court 1972)..... 35

Statutes and Codes

Colorado Rules of Professional Conduct Rule 1.4 Communications 39

Colorado Revised Statutes 18-3-207. Criminal extortion - aggravated extortion 24-25

District of Colorado Local Rule 77.2 Ex parte Communication with Judicial Officers 31

Federal Rules of Criminal Procedure Rule 42 Criminal Contempt (1) Notice 27

Federal Rules of Criminal Procedure Rule 86.2 27

United States Supreme Court Admission to the Bar 37

U.S. Code Title 18, Part 1, Chapter 13 Section 242 Deprivation of Rights Under Color of Law 26

U.S. Code Title 18, Part 1, Chapter 73, § 1503. Influencing or injuring officer or juror generally 23

U.S. Code Title 18 Part 1 Chapter 73 § 1509. Obstruction of court orders 36

U.S. Code Title 18 Part 1 Chapter 73 § 1512. Tampering with a witness, victim, or an informant 25-26

U.S. Code Title 18 Part 1, Chapter 73, § 1513. Retaliating against a witness, victim, or an informant 30,31

U.S. Code Title 18 Part II, Chapter 207 § 3142a Release or detention of defendant pending trial..... 27

U.S. code 28 U.S.C. Part V Chapter 111 §1651. Writs 3

Title 18, Part III, Chapter 301, § 4001 (a) Limits to Detention 29

United States Judicial Code Canon III.... 12,22

Other Authorities

The Path of the Law by Oliver Wendell Holmes, Jr.10 Harvard Law Review 457 (1897)..... 20-21

OPINIONS BELOW

District Court order dismissing the District of Colorado case 02-cv-1950 Sieverding v. CBA et al. (Appendix A)

10th Circuit Affirmation of Order dismissing the District of Colorado case 02-cv-1950 Sieverding v. CBA et al (Appendix B)

District of Colorado order shifting attorney bills (Appendix C)

10th Circuit affirmation of the attorney fee shifting (Appendix D)

District of Kansas memorandum order dismissing that action (Appendix E)

10th Circuit affirmation of the Kansas dismissal (Appendix F).

District of Columbia Memorandum Order Dismissing the Complaints Sua Sponte (Appendix G).

The D.C. dismissal of the Sieverding Appeal (Appendix H).

Affirmation with modifications of injunction against litigation by 10th Circuit (Appendix I)

District of Columbia sua sponte injunction against pro se litigation. (Appendix J)

10th Circuit Denial of Recall from Mandate (Appendix K)

Court of Appeals for DC Circuit denial of second motion for crime victim status (Appendix L)

STATEMENT OF JURISDICTION

Supreme Court jurisdiction is invoked under mandamus for obstruction of justice by the defense counsel and because the defense counsel disobeyed the Supreme Courts' order in *Young v. United States Ex Rel Vuitton*, 107 S. Ct. 2124, 481 U.S. that a lawyer must not act as prosecutor in an indirect contempt action to benefit their client. In *Young v. United States Ex Rel Vuitton*, the Supreme Court took jurisdiction using their supervisory powers.

This action involves a litigant without legal training in a civil matter who was denied the written procedures. "This Court has supervisory authority over the federal courts to prescribe binding rules of evidence and procedure." *Dickerson v. United States*, NO. 99-5525 (U.S. 06/26/2000)

The history involves injunctions that were issued without Rule 65 procedure and form. The Colorado Supreme Court used its supervisory authority in *Stull v. District Court of Pueblo County,* 308 P.2d 1006, 135 Colo. 86 (Colo. 03/18/1957) when an injunction was issued without compliance with Rule 65.

This action involves a U.S. citizen who was taken into detention and transported by the U.S. Marshals in chains across state lines without a request by the Justice Department or a warrant stating an Act of Congress by number or name. There were prescheduled contempt of court hearings that were not proceeded a notice of criminal contempt meeting the requirements of Federal Rules of Criminal Procedure Rule 42. There was a hearing resulting in jail in which

she was told that she did not have a right to a defense lawyer or an evidentiary hearing.

The Supreme Court exercised supervisory authority in *McNabb v. United States*, 318 U.S. 332, 340 (1943) saying ("Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence").

The U.S. Supreme Court has jurisdiction as a supervisory court under 28 U.S.C. Part V Chapter 111 §1651. Writs because Sieverdings' Equal Protection rights were invaded and there was obstruction of justice below.

The Sieverdings first Supreme Court petition was found defective on 10/24/07 and they were offered 60 days extension.

On 12/14/07, Colorado Judge Nottingham held a CanonIIIb (3) hearing and Brougham testified then he had ex parte conference about 02-1950 with Magistrate Schlatter in Jan. 2003. The Sieverdings do not have a potential forum in the 10th Circuit because, previous to the most recent disclosure about the telephone call with the magistrate, it ordered that its clerks should not accept any more documents from petitioner. [Appendix K.] They also ordered the clerks not to accept pleadings from the Sieverdings on the injunction against self representation (06-3178) as a minute order on 12/2/06. Thus, the Sieverdings do not have a mechanism to convey this information or any other information to the 10th Circuit. All of the damage cases have been dismissed without oral briefing at

the applellate level. The appeal of 05-02122, 06-3178, was denied rehearing on 11/27/06. The original Colorado case was denied rehearing on 6/2/05.

The Sieverdings filed motions in both the D.C. Court of Appeals and the 10th Circuit Court of Appeals to be declared crime victims so they could receive benefits under the Justice For All Act, but those petitions were denied. (U.S. Court of Appeals for the DC Circuit, 07-5126/07-7060/07-7068 per curiam order 1045949 6/8/07 "Nor do appellants' allegations show the commission of a Federal offense, or that any crime occurred in the District of Columbia, or that appellants qualify for relief as a "crime victims." § 3771(d)(3), (e) and per curiam order 1059503 8/9/07) The appeals were dismissed without briefing on 8/8/06.

Mrs. Sieverding filed in the10th Circuit (06-1439, 3/26/07 2012468 e-motion) asking for a master to determine why there is no certificate of interested parties showing the insurance companies as specifically required by 10th Circuit Rule46.1, but the panel "denied all outstanding motions".

STATEMENT OF CASE

A. The basis for mandamus is obstruction of justice:

Must the Supreme Court intervene when there is obstruction of justice by the defense counsel in order to avoid a jury trial? Must it use its equitable powers to punish obstruction of justice with default?

B. Evidence the Sieverdings acted in good faith:

> "Describing each of the individual defendants and all of their claims that are asserted against

> each one of them would be interminable...the claims against the Bennetts read like the table of contents for a hornbook on torts". (District of Colorado 02-cv-1950 *Report and Recommendation of Magistrate Schlatter* 10/14/2003 pp6-7)

The award of attorney bills does not identify any fraudulent statements by the Sieverdings, nor any threats they made, or any discovery abuses. There was no discovery. The Sieverdings were not accused of disrupting a hearing. The Sieverdings filed a "motion by plaintiff for (discovery) of any and all evidence of improper contact between the plaintiff, the defendants, and their attorneys", but no replies were filed. (District of Colorado 02-cv-1950 document 192 10/16/2003)

A lawyer in Steamboat Springs, William Hibbard, who had represented the Sieverdings in 2000-2001 and was familiar with the events there, had read their 02-cv-1950 complaint and sent Mrs. Sieverding a letter saying: "I did have a chance to read through the voluminous pleadings while I was up at the cabin. Interesting theories especially against the ABA and the Colorado Bar Association". (District of Columbia 05-01283, Document 30 p. 27)

On 12/14/07, Mr. Sieverding attended an oral hearing with Judge Nottingham, who has ordered the sanctions. Judge Nottingham said:

"I think you don't always understand what is going on. And I mean –I don't mean that in a pejorative way. You're just untrained in the law" (District of Colorado 02-cv-1950 Court 12/14/07 transcript p. 4

Judge Nottingham to David Sieverding)

C. Evidence of involvement of insurance companies that sold errors and omissions insurance in Colorado but did not register with the Colorado Department of Insurance:

David Brougham billed Underwriters at Lloyd's London c/o Lord, Bissell & Brook Attn Walter Slezak for claim 6603013-1896". (10th Circuit 06-1439 AP-0505).

The bills from McConnell Siderious et al to TIG Insurance were submitted in 02-cv-1950 document 464. Bills from Faegre & Benson LLP to O'Brien, Butler, McConihie and Schaefer LLP for Mutual Insurance were submitted in document 461. Mutual Insurance was referenced on 10/29/04.

Mrs. Sieverding searched the web site of the Colorado Department of Regulatory Affairs for these insurance companies and posted copies of the web pages in "motion for judicial notice that the Colorado Department of Regulatory Records for Lloyds of London, Beazley, Mutual Insurance based in Hamilton, Bermuda, or TIG Insurance. (District of Colorado 02-cv-1950 document 1001)

10th Circuit local rule 46.1 says ""The certificate (of interested parties) must list all... insurers" but the defense counsel filed no certificate acknowledging Lloyds, TIG, or Mutual Insurance. (10th Circuit 06-1439, 3/26/07 2012468)

D. Evidence of ex parte oral and written communications with the magistrate:

Before the defendants were even served, the assigned magistrate, O.E. Shlatter, already had a conversation the defense lawyer David Brougham recently described as:

> "Are you going to represent City of Steamboat Springs? And I said yes. He said, well, what I think I'm going to do is set a status conference" (District of Colorado, 02-cv-1950 transcript 12/14/07 p.8)

> "Telephone call from Dave Brougham advising me that the clerk for Magistrate Schlatter advised that no Reply would be necessary" (District of Colorado 02-cv-1950 document 465)

Brougham's historical billing detail refers to "Telephone call to court regarding response to motion to compel" 6/11/03, "Telephone call from clerk regarding certain motions, 7/2/03, "Confer with court clerk regarding status of ruling on motions", 8/14/03, "Confer with court regarding status of pending motions and timing of ruling", 8/15/03, "Confer with court regarding status of motions" 9/09/03, "Further conference with court staff regarding motion status", 12/11/03, "Confer with court regarding status of plaintiff pleadings, pending motions, etc. Analyze motion to enjoin grounds, etc." 1/07/04 (District of Colorado 02-cv-1950 document 465)

Magistrate Schlatter's report includes:

"I received letters from two different lawyers complaining that Mrs. Sieverding persisted in her efforts to contact them." (District of Colo-

rado 02-cv-1950 document 188 p. 53)

E. Evidence of solicitation of ex parte conference with the District of Colorado judge:

> "On 10/20/03, the pro se plaintiffs filed a motion for partial summary judgment against the A.B.A....The A.B.A. respectfully requests that Plaintiffs' motion as against the A.B.A. be stayed, as well as the time in which the A.B.A. is required to respond to plaintiff's motion, until such time as this Court rules on the Magistrate Judge's Recommendation... If your honor prefers that this request be presented by formal motion, or has any questions or needs further information concerning this request, I respectfully ask that your Honor's clerk call me at 312-988-6684." Patricia Larson, A.B.A. in-house counsel, District of Colorado letter 10/28/03 Document 242

F. An injunction was issued without Rule 65 procedure and the Sieverdings were not allowed to contest the legal validity of the injunction thru the contempt of court process as described in Tory et al. v. Cochran, 125 S.Ct. 2108, 544 U.S. 734, 161 L.Ed.2d 1042 (U.S. 05/31/2005):

There are three continuing injunction orders in the appendix that were issued without bond or identification of illegal act to be avoided. They include references to the District of Colorado 02-cv-1950 complaint. These are attached:

Appendix District Court order dismissing the District of Colorado case 02-cv-1950 Sieverding v. CBA

et al. (Appendix A)

District of Columbia District Court sua sponte injunction against pro se litigation. (Appendix J)

Affirmation with modifications of injunction against litigation by 10th Circuit Court of Appeals (Appendix I)

Before she was jailed Mrs. Sieverding attempted to contest the validity of the injunction as instructed by the Supreme Court in *Tory et al. v. Cochran*, which she had read and relied on:

> "[A] person subject to a court's injunction may elect whether to challenge the constitutional validity of the injunction when it is issued, or to reserve that claim until a violation of the injunction is charged as a contempt of court". *Tory et al. v. Cochran,* 125 S.Ct. 2108, 544 U.S. 734, 161 L.Ed.2d 1042 (U.S. 05/31/2005)

However, Judge Nottingham would not allow her to rely on the Supreme Court decision as she attempted when she said:

> Kay Sieverding, petitioner: "In construing an order, words must be given their ordinary and customary meaning. The order said 'based on'. It did not say 'based on including'. It did not say 'based on related'....Ambiguities in the scope of a restraining order will be resolved in the favor of the defendant.... A person subject to a court's injunction may elect whether to challenge the constitutional validity of the injunction when it is issued or to reserve that claim until a viola-

tion of the injunction is charged as a contempt of court. That's Supreme Court..." (oral motion 9/2/05, pp.22-26)

Judge Nottingham "your time is up...Now, what you say is exactly what I told you I wasn't going to hear" District of Colorado 02-cv-1950 oral hearing 9/2/05 transcript p26.

G. Evidence of assumption of prosecutorial role by a financially motivated lawyer:

Judge Nottingham: "This matter is before the Court on the motion for an order citing the plaintiffs for contempt ...Now, Mr. Beall, I understand that you're taking the lead on this one, so to speak?"

Mr. Beall: "Yes, Your Honor, I am"

Judge Nottingham: "All right. You may proceed."

(Transcript District of Colorado 02-cv-1950 Document 884 p.3)

"this is civil not criminal contempt. They do not have a right to counsel. They do not have the right to a jury trial. They do not have the right to a full and complete evidentiary hearing." Christopher Beall pp 13-14

H. Sample of evidence of threats by the defense counsel:

"While she was still incarcerated at the Clear Creek County Jail pursuant to the Court's order, Kay Sieverding filed an entirely new pro se

lawsuit, this time in the U.S. District Court for the District of Kansas, again based on the same series of transactions described in this case... require David Sieverding to show cause why he should not be held in contempt of court for assisting Kay Sieverding." Christopher Beall motion filed in District of Colorado 12/12/05 document 704 p.5.

"In light of Mrs. Sieverding's renewed efforts to litigate pro se civil actions that this Court already has found to violate its filing restrictions, Mrs. Sieverding should be ordered to appear before this Court and show cause why she should not be held in contempt of court and committed to the custody of the U.S. Marshal's Service until such time as she fully complies with this Court's order to terminate all litigation that violates the Court's filing restrictions". (02-cv-1950 document 862 Beall motion 8/10/06 P.4.)

"She filed motions for reconsideration in the District of Columbia cases 0501283, 0501672 and 0052122... ask the Court [to issue] a bench warrant in this matter". (District of Colorado 02-cv-1950 9/22/06 transcript Document 884 p.5.)

City of Steamboat Springs publishes on their web site as city council minutes:

"The Federal District Court held a contempt hearing regarding Kay Sieverding. She refused to dismiss the cases that she filed and was arrested. Mr. Sieverding dismissed the cases but

> later reneged and said that he would not dismiss the cases, so he may be arrested as well." (District of Colorado 02-cv-1950, document 997)

J. Evidence of jailing ordered by Federal Judge Nottingham without a warrant that states an Act of Congress by Statute or Common Name or notice of criminal contempt meeting the requirements of Federal Rules of Criminal Procedure Rule 42:

The District of Colorado 02-cv-1950 docket shows that contempt of court proceedings were scheduled on 9/2/05, 1/4/06, 2/16/06, and on 9/22/06. None of these included or were proceeded by an order of criminal contempt meeting the requirements of the Federal Rule of Criminal Procedure. Mrs. Sieverding was ordered jailed by Judge Nottingham from 9/2/05 to 1/4/06. She was detained in Wisconsin on 2/6/06 at his order but was released on her agreement to attend a contempt of court hearing on 2/16/06. An order for her arrest was issued 9/22/06 but she was not in court to be detained. She was detained on that warrant on 5/10/07 in Wisconsin, taken by the Marshals to Colorado, and released by Judge Nottingham on 6/1/07.

There are two warrants shown in the court files for District of Colorado 02-cv-1950. One was issued on 2/2/06 and one on 9/22/06. The charge listed on both is "failure to appear in a civil matter". There is no Act of Congress listed by statute or common name on either warrant.

K. Description of financial award to the defense counsel:

On 9/22/07, Judge Nottingham ordered the Sieverdings to pay the defense counsel $101.864.82. (Appendix C) The award does not specify any misconduct by the Sieverdings.

L. Garnishment and publication of non-final judgment:

In March 2004, Judge Nottingham recommended that the Sieverdings have to pay all the legal bills generated by six law firms for over a year for any and everything related to the Sieverdings. Magistrate Schlatter said that the Sieverdings could not dispute the amounts of the bills. (District of Colorado 05/17/2004 document 487 p.1)

The magistrate published an order claiming that the Sieverdings owed the defense counsel $111,862. The Sieverdings have not yet exhausted their appeal time on the attorney bills and that is part of this petition. The District of Colorado clerks' office confirmed that they did not issue a Form 451, a requirement for proceeding with a collection action. Without waiting, the law firms filed a "registration of foreign judgment" in Dane County WI. In Wisconsin, a garnishment action is supposed to be a separate proceeding and there are special forms. These were not filled out. However, the defendants all the Sieverdings' bank accounts down to $1.00.

After the garnishment, Judge Nottingham ordered the Sieverdings to pay the defense counsel, they did not remove the notice of foreign judgment as requested. (Dane County 2005 FJ26a). That affects their credit and access to business capital.

M. Continued Internet publications by defendant Steamboat Pilot.

The original complaint included media tort claims against the Steamboat Pilot. They continued to publish the disputed articles on the Internet and also published new articles about 02-cv-1950 litigation. Sieverding posted on the comments sections on those Internet articles that they republished fraudulent statements. Those statements accused Sieverding of a crime and of incompetence in her college major, city planning. The Pilot deleted her comments contesting the statements about her and disabled the comments posting sections on those articles. (District of Colorado 02-cv-1950 document 858 *"Request that the defense associates cease publishing about plaintiff on the Internet"*.

N. Refusal to docket

The District of Columbia has not docketed many of Sieverdings filings. They were refused an ECF account even though they have computer skills, Internet access, and had previously used ECF. Their paper filings were not entered into the docket on many occasions. (District of Colorado, 02-cv-1950 document 996 notice of service on DC court and defense counsel.) This resulted in a lack of ability to use motion practice and a dismissal of their Appellate Court for the District of Columbia Circuit being dismissed as untimely even though they provided copies of timely delivery receipts. (U.S. Court of Appeals for the DC Circuit 07-7060 PER CURIAM ORDER filed [1059247] of the motions to dismiss the appeals, the consolidated response and supplement thereto, and the consolidated

reply, it is ORDERED that the motions to dismiss be granted and Nos. 07-5126, 07-7060, and 07-7068 be dismissed [1040984-1]

The 10th Circuit 06-1439 10/11/07 order also includes a sua sponte order to the clerks not to docket.

O. Development of case law undermining the Anti Injunction Act:

In District of Columbia, Judge Urbina issued a sua sponte injunction against litigation, which he attached to his memorandum order dismissing their case (Appendix J).

Mrs. Sieverding objected. The ABA filed:

> "Federal courts are authorized under U.S.C. 28 Section 1651(a) to sua sponte enjoin a party from filing further papers ...the traditional standards for injunctive relief, i.e., irreparable injury and inadequate remedy at law, do not apply." (District of Columbia 05-02122 document 38.)

The Sieverding precedent has already been cited by the 10th Circuit to justify injunctions against litigation. (*Deelen v. City of Kansas City*, Missouri, No. 06-1896 (8th Cir. 10/19/2007), *Gaiters v. City of Catoosa,* No. 06-5168 (10th Cir. 05/22/2007), *Andrews v. Tacha*, No. 07-CV-0200-CVE-FHM (N.D.Ok. 05/08/2007)

P. District of Colorado prejudice against litigants without law licenses shows in statistical results:

> "Approximately 2,500 to 3,000 cases are filed here each year. That is the number of cases

> that are divided up among the district judges. Of that total number of cases that are filed, approximately 600 each year are cases that are filed by litigants without counsel....my magistrate judge colleagues and I cannot recall a single case in which a pro se litigant has proceeded all the way through a case, obtained a jury trial and received a favorable verdict... if such exceptions exist, we have not heard of them". Magistrate Schlatter 03-N-2293 *Steiner v. Concentra Inc.* 8/5/2004 "Order denying plaintiff's motion to recuse". P.5.

SUMMARY OF ARGUMENT

The Sieverdings are helpless in this situation. If the Supreme Court does not intervene the defendants will probably a.) Garnish their bank accounts and take their possessions or continue to publish claiming that the Sieverdings owe them so that the Sieverdings and their business will not have access to credit. b.) Continue to publish articles on the Internet regarding the Sieverdings c.) Re-incarcerate Mrs. Sieverding or incarcerate her husband and/or children.

The 10th Circuit ruled in November 2006 that the District of Colorado had no authority to intervene outside the 10th Circuit (Appendix I) and Mrs. Sieverding thought she was safe from seizure because she filed a habeas appeal in the 10th Circuit and did not litigate within the 10th Circuit. However, on 5/10/07 the Verona Wisconsin police showed up at her home and took her into custody based on the 9/22/05 warrant for failure to appear on a civil matter.

Mrs. Sieverding was taken before the magistrate in Western Wisconsin. There

the assistant U.S. attorney Robert Anderson said: "the government isn't a party to this." transcript 5/11/07 p. 2. Despite that Mrs. Sieverding was held for three weeks without charges.

> Judge Nottingham: "They may choose to abandon any contempt proceedings in this court if you will agree not to file any further pleadings in this case...They have a right to pursue contempt proceedings if they wish to... If they wish to pursue contempt proceedings, Ms. Sieverding, you may not be out of the words, so to speak. However, you can negotiate with them." District of Colorado 02-cv-1950 transcript 6/1/07

There may be a question of certiorari, but the Sieverdings do not know it. What they know is that they filed an interstate diversity complaint with Hornbook torts and supported economic damages of over the minimum $75,000. They verified their complaints under penalty of perjury but no fraud on their part was claimed. Instead of going to a jury for review of their claims, they were threatened, put in jail, and fined.

The threats from defense counsel seem to meet the exact legal definition of criminal extortion.

After 5 years of litigation with no discovery and no stipulations of fact, remand to prove facts would be difficult.

What the Sieverdings think will help them is

1.) Cessation of fraudulent publications about them 2.) Relief from defendants' garnishment actions. 3.) Recognition of their damages thru cash award.

If the Supreme Court uses its authority to find the defendants in default because they a.) Engaged in ex parte b.) Solicited ex parte c.) Made threats d.) Carried out threats e.) Represented insurance companies that did not registered with state authorities, then a.) The Sieverdings will be helped b.) Similar use of ex parte and threats will be discouraged and c.) Insurance companies will be encouraged to register with state authorities.

The local rules prohibited phone calls to the magistrates without the Sieverdings presence nevertheless Brougham and Lettunich engaged in telephone calls with Magistrate Schlatter in January and February 2003.

Canon III b 2 requires that a judge require standards from his staff that do not involve communicating with litigants about procedural strategies affecting the merits. However, the attorney representing the ABA requested that Judge Nottingham send messages thru his clerks about her request to stay summary judgment hearings.

Christopher Beall made repeated threats to jail the Sieverdings if they did not withdraw related claims and succeeded in getting Mrs. Sieverding jailed three times. The Sieverdings believe that it was legal for the Sieverdings to petition the other courts and, therefore, they think that since they were threatened for doing what is legal, that they were extorted. When Mr. Beall

acted as prosecutor at the 9/2/05, 1/4/06, 2/16/06, and 9/22/06 hearings, asking for Mrs. Sieverding to be put in jail unless and until she wrote what Beall wanted, that is exactly what the Supreme Court ordered him not to do in *Young v. United States Ex Rel Vuitton*, 107 S. Ct. 2124, 481 U.S.

The Supreme Court has authority to find attorneys in contempt of court when they violate court orders. When the lawyers act as prosecutors to get people put in jail so that their clients do not take any chance of losing a lawsuit, are not they are in contempt of the Supreme Court? They think that when a lawyer asks a judge to have his assistant call them about their proposal to skip a Rule 56 Summary Judgment hearing, that that is obstruction of justice. When a lawyer garnishes bank accounts without a final judgment signed by an authorized official, isn't that also obstruction of justice? The use of courts by insurance companies not registered with state authorities must be bad public policy because state authorities were created and funded after extensive discussion about public needs to be protected from insurance companies.

Congress has neither suggested nor approved special procedural requirements for litigants without law licenses, who now account for about one quarter of all litigants. Case law is not to amend the Judiciary Act, that is to be saved for a formal procedure involving Congress and the Supreme Court. Use of case decisions to change the law for litigants without licenses is illegal.

The Court should extend the Colorado Supreme Court rulings in *Stull v. District Court of Pueblo Coun-*

ty, 308 P.2d 1006, 135 Colo. 86 (Colo. 03/18/1957) that an injunction is void if it is issued without rule 65 procedure and in *Tassian v. People*, 731 P.2d 672 (Colo. 01/20/1987) that the 14th amendment applies in litigation. The Court should say clearly that lower federal courts cannot jail U.S. citizens with the justification of an Act of Congress and following the Federal Rules of Criminal Procedure and remind lawyers of its statement in *Senn v. Tile Layers Protective Union*, 301 U.S. 468 (1937) "One has no constitutional right to a "remedy" against the lawful conduct of another."

The Court should act to prevent use of federal courts by agents of insurance companies that are not registered with state insurance authorities to sell the contract under which they insured the claim. The Court should shield the Sieverdings with the Constitution and use its equity powers to find the defense counsel in contempt and the defendants in default.

ARGUMENT

A. Supreme Court must use its supervisory powers when there is obstruction of justice and lower courts do not remedy.

If the Court does not use its equity powers when there is obstruction of justice, the Badman's Rule will prevail:

> "I think it desirable at once to point out and dispel a confusion between morality and law, which sometimes rises to the height of conscious theory, and more often and indeed constantly is making trouble in detail without reaching the point of consciousness. You can see very plainly

> that a bad man has as much reason as a good one for wishing to avoid an encounter with the public force, and therefore you can see the practical importance of the distinction between morality and law. A man who cares nothing for an ethical rule which is believed and practiced by his neighbors is likely nevertheless to care a good deal to avoid being made to pay money, and will want to keep out of jail if he can." *The Path of the Law by Oliver Wendell Holmes*, Jr.10 Harvard Law Review 457 (1897)

B. Court recognized its obligation in similar cases involving 4th Amendment violations.

> "Where...it is clear that the action of the State violates the terms of the fundamental charter, it is the obligation of this Court so to declare." *Shelly v. Kraemer* 334 U.S. 1, (United States Supreme Court 1948)

The Supreme Court used its supervisory powers in *Young v. United States Ex Rel Vuitton* when an interested prosecutor was also appointed.

The Supreme Court became involved with foreign citizens were held in Guantanamo Bay. Similarly the Supreme Court should involve itself when their government without the required procedures to determine that they committed a crime, jails citizens in the U.S.

The Supreme Court recognizes its supervisory authority in actions by the federal government involving criminal prosecutions and any procedure that may result in incarceration should involve rigorous proce-

dures. That obligation should not be avoidable by labeling the action "civil contempt".

C. Use of injunctions against litigation, private prosecutors, sua sponte injunctions, and injunctions not meeting Rule 65 requirements facilitate injustice.

The Supreme Court of Colorado was firm:

> "the inferior tribunal has exceeded its jurisdiction in not complying with Rule 65, R.C.P. There is no plain, speedy or adequate remedy available to petitioners except that herein sought. The petition filed in this court set forth the necessary facts and circumstances calling for the exercise of our discretion, and we consider it a matter of "great public importance" when an inferior court has issued injunctive orders without complying with the provisions of Rule 65. *Mr. Justice Holland in Kellner v. District Court* (1953), 127 Colo. 320, 256 P.2d 887, said that a case in which a court is proceeding without jurisdiction of the persons or subject matter also involves a matter of great public importance. Thus construing our rules and the cases we have referred to, we determine that the facts here involved present matters of sufficient public importance to call for the intervention of this court to prevent a manifest injustice. The Rule is made absolute." *Stull v. District Court of Pueblo County*, 308 P.2d 1006, 135 Colo. 86 (Colo. 03/18/1957)

The U.S. Supreme Court should affirm the Colorado Supreme Court's Stull decision.

D. Precedence of soliciting the court to deny its Canon III responsibilities risks others.

Justice is at risk because Patricia Larson was able to send Judge Nottingham a letter instead of filing a motion. The Sieverdings wanted to have their summary judgment motion heard to make progress in narrowing the issues, but Ms. Larson asked Judge Nottingham to skip that procedure. The result is that they lost access to their evidence. The fact that Larson was working for the ABA when she asked the Judge to skip the hearing increases the likelihood other litigants will write to judges asking them to skip Rule 56 hearings. Was that letter a crime?

> "Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede,

> the due administration of justice, shall be punished as provided in subsection." Title 18, Part 1, Chapter 73, § 1503.a Influencing or injuring officer or juror generally.

Is it legal to ask a judge to skip a hearing if you do not threaten him or is that Conspiracy to Deprive Rights under Color of Law? Did not the Sieverdings have a legally enforceable right to the summary judgment hearing because pro se litigants have an equal protection right to the written procedures?

> "Cannot arbitrarily discriminate against the pro se litigant who, as much as the litigant represented by counsel, has the right to seek judicial relief for the redress of legal wrongs in accordance with procedures applicable to all who use the courts....The chief judge's directive at issue here clearly discriminates against pro se litigants solely on the basis of their pro se status and, in that respect, lacks any rational basis in fact and thus violates equal protection of the laws as guaranteed by article II, § 25 of the Colorado Constitution." *Tassian v. People*, 731 P.2d 672 (Colo. 01/20/1987)

E. Criminal extortion?

The definition of criminal extortion in Colorado is:

> "(1) A person commits criminal extortion if: (a) The person, without legal authority and with the intent to induce another person against that other person's will to perform an act or to refrain from performing a lawful act, makes a

substantial threat to confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of, the threatened person or another person; and (b) The person threatens to cause the results described in paragraph (a) of this subsection (1) by: (I) Performing or causing an unlawful act to be performed; or (II) Invoking action by a third party, including but not limited to, the state or any of its political subdivisions, whose interests are not substantially related to the interests pursued by the person making the threat. (1.5) A person commits criminal extortion if the person, with the intent to induce another person against that other person's will to give the person money or another item of value, threatens to report to law enforcement officials the immigration status of the threatened person or another person...

(3) For the purposes of this section, "substantial threat" means a threat that is reasonably likely to induce a belief that the threat will be carried out and is one that threatens that significant confinement, restraint, injury, or damage will occur. Colorado Revised Statutes 18-3-207. Criminal extortion.

Why is it not criminal extortion as described in C.R.S.18-3-207 to send documents requesting Judge Nottingham to put them in jail if Sieverdings did not withdraw their civil actions?

F. Felony witness intimidation?

The definition of witness intimidation is:

> "(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—
>
> (A) influence, delay, or prevent the testimony of any person in an official proceeding;
>
> (B) cause or induce any person to—
>
> (i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;
>
> (ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding"

U.S. Code Title 18 Part 1 Chapter 73 § 1512. Tampering with a witness, victim, or an informant.

When Christopher Beall, Traci Van Pelt, David Brougham, and the other defense attorneys threatened Mr. and Mrs. Sieverding to stop them from going to or filing in court, was that witness intimidation as defined in section 2?

G. Is an Injunction against a legal activity a Deprivation of Rights Under Color of Law?

> "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws

of the United States" U.S. Code Title 18, Part 1, Chapter 13 Section 242 Deprivation of Rights Under Color of Law.

H. Is jailing without the required procedural safeguards a Deprivation of Rights Under Color of Law?

Mrs. Sieverding was not allowed advance notice of intent to jail, a defense attorney, a right to subpoena, a warrant stating An Act of Congress by Statute or name, a formal notice of contempt, a verified statement of probable cause, an explanation of the charges by the arresting officer, a preliminary hearing, an arraignment, a formal request by the governor of Colorado or chief justice and a statement of the offense by the Department of Justice before extradition from Wisconsin, nor a formal statement of reasons for release.

> " The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must: (A) state the time and place of the trial... (C) state the essential facts constituting the charged criminal contempt and describe it as such."Federal Rules of Criminal Procedure Criminal Contempt Rule 42 Criminal Contempt (1) Notice.

The notice Judge Nottingham gave the Sieverdings did not charge the Sieverdings with criminal contempt.

> "(a) In General.— Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be— (1) released

> on personal recognizance or upon execution of an unsecured appearance bond." U.S.C. Title 18 Part II, Chapter 207 § 3142a Release or detention of defendant pending trial.
>
> Mrs. Sieverding was not offered a bond but was sent straight to jail.

On 9/2/05, the day Judge Nottingham sent Mrs. Sieverding to jail the first time, he said:

> "You're going to be allowed to make a presentation, but it's not the presentation that you probably have in mind, because I'm not going to listen to any more of the things that are in your papers...You have five more minutes to make any additional presentation you wish to make...your time is up". (District of Colorado, 02-cv-1950 9/2/05 transcript document 884, pp 20-26).

The petitioners think that this abbreviated procedure in a hearing that resulted in four months of jail was a Deprivation of Sieverding's Rights Under Color of Law.

The existing procedures used by the Federal Courts and the U.S. Marshals were inadequate to protect Mrs. Sieverding. She told the magistrate in Wisconsin:

> "on the warrant, the place for the statute is blank. There's no law. It says right in Title 18 in the part there about jails, that a U.S. citizen cannot be held by the U.S. government except pursuant to an Act of Congress, which means it

> is supposed to have a statute number...I looked it up that in the rules of criminal procedure that under number 4 it says that a warrant in order to be valid has to state what crime you are accused of and the probable cause and that warrant does not do so." *District of Western Wisconsin Transcript* 5/11/07 p.12

> The Wisconsin magistrate responded: "There is the concern that this court does not have any direction as to the authority under which we would continue to detain Ms. Sieverding. However, I will tell you that Judge Nottingham has informed this court that he does want Mrs. Sieverding detained and transferred to the District of Colorado" p. 2.

> ..."it's not my place to judge what's a valid warrant" 5/11/07 *Transcript District of Western Wisconsin* p. 7.

The Supreme Court should use its supervisory authority to make sure that U.S. citizens are not again detained by their government without a valid warrant as required by:

> "Title 18, Part III, Chapter 301, § 4001 (a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."

I. Is a refusal to docket a Deprivation of Rights Under Color of Law?

When a court refuses to docket, as the District Court of D.C. did, or a Court orders their clerks not to

docket, as the 10th Circuit and District of Colorado did, is that Deprivation of Rights Under Color of Law? When the Officers of the Court know about the problem and do not intervene, is that obstructing justice by denial of access to evidence?

J. Witness Retaliation by seizure of assets:

As Mrs. Sieverding, who is pro se, understands Rule 11, if a litigant does not misrepresent the facts or misquote the law, then they should not be fined. Accusations of fraud must be made with particularity, Rule 9b. If the judge does not identify what was written or said that was incorrect, and then orders you to pay the other side $101.864.82 (more than twice the 2006 median family income as reported by the U.S. Census bureau), she thinks that if the parties who are claiming one's assets do not complain about receiving it under false pretenses and just remove the funds from your bank account, as the defendants did already, not waiting for Judge Nottingham to issue a final order so that it could be appealed, then is that is fraud by false pretenses? When they registered a foreign judgment for the attorney bills without waiting for the appeal process to be completed, that must be witness retaliation by seizure of assets.

The Sieverdings believe they did not do anything wrong when they filed in court because they told the truth about the facts, quoted the cases and laws correctly, did not threaten anyone, and tried their best to follow all the rules. So therefore, they think that when the defense counsel garnished their bank accounts, that what they did was witness retaliation as described in the highlighted sections:

> "(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding;." United States Code Title 18 Part 1, b Chapter 73, § 1513. Retaliating against a witness, victim, or an informant.

K. Magistrate Schlatter's reports and all pleadings and reports endorsing it should be struck because of the ex parte contamination:

At a recent hearing, defense counsel David Brougham confirmed that he had an oral conversation with Magistrate Schlatter about the litigation. Anthony Lettunich sent many of the defendants a bill for a conference call with himself and Magistrate Schlatter labeled re Sieverding litigation. Lettunich did not appear at the 12/14/07 hearing to contest his bill for the ex parte conference.

> "No attorney or party shall contact orally a judicial officer regarding any case by telephone, in person, or through any other means, unless all other parties in the matter, or their attorneys, are present or on the telephone." D.C.COLO.LCivR77.2 Ex Parte Conferences

Therefore Brougham and Lettunich have confessed to ex parte with Magistrate Schlatter; Lettunich by his bill and Brougham by his 12/14/07 state-

ment.

Brougham's bills include over 20 entries for calling the court.

In a similar case in which a lower level adjudicator engaged in ex parte conference, the Court of Appeals for the District of Columbia Circuit used its supervisory authority and ruled that all reports incorporating the reports from the ex parte conference must be struck:

> "*In re: Brooks* 383 F.3d 1036 (D.C. Cir. 2004), in which we held Special Master Balaran's ex parte contacts with parties and counsel to certain contempt proceedings arising from this same class action necessitated his recusal with respect to those proceedings under both §§ 455(a) and (b)(1) of 28 U.S.C. Id. at 1046. In order to protect those proceedings from the taint of his participation, we ordered that Balaran's work product relevant to those proceedings be suppressed. Id. In light of that decision, Interior now urges us to suppress the three reports Balaran issued after he hired Smith...
>
> We have held that a special master is subject to the same ethical restrictions as a judge when the special master serves as the "functional equivalent" of a judge even though the special master is under a judge's "control." *Jenkins v. Sterlacci*, 849 F.2d 627, 630-32 (D.C. Cir. 1988)...
>
> Interior responds that "a party confronted with adverse reports from a biased judicial offi-

cer is not required to litigate the merits of each of their findings and conclusions, but may properly obtain vacatur of the reports if grounds for disqualification are established."...

We believe suppression of Balaran's reports is warranted and indeed necessary. As we noted In re Brooks, "selection bias" does not necessarily manifest itself in the record; it may derive from "information that leave[s] no trace in the record." 383 F.3d at 1046 (internal quotation marks omitted) (alteration in the original). Balaran's reliance upon Smith in choosing which documents to consider and, by implication, which documents not to consider, would lead "one fully apprised of the surrounding circumstances," *Cobell*, 33... F.3d at 1143, to conclude Balaran's interim report was likely affected by selection bias; Smith obviously was not a disinterested source, and his input was received ex parte and therefore untested by the adversary process. Because Balaran was disqualified from proceeding once he hired Smith, his subsequent work product -- including the April 2003 interim report of investigation and the two site-visit reports that followed -- must be suppressed. If those reports have not been used against the Department and are not presently part of the record before the district court, then so much the better; only s suppression can ensure neither the plaintiffs nor the district court will rely upon the reports in the future, to the detriment of the "public's confidence in the judicial process." *Liljeberg v. Health Servs.*

Acquisition Corp., 486 U.S. 847, 864(1988).

> Upon his hiring Smith, Balaran's "impartiality might reasonably [have been] questioned." 28 U.S.C. § 455(a). Therefore, we grant Interior's petition for a writ of mandamus and order the suppression of the three disputed reports Balaran submitted to the court after he hired Smith. They shall "be stricken from the district court's records" and given "no legal effect." Gardiner v. A.H. Robins Co., 747 F.2d 1180, 1183 (8th Cir. 1984) (striking from record reprimand of counsel and related comments made by judge disqualified for bias)". *In Re: Dirk Kempthorne Secretary of the Interior in his Official Capacity*, Petitioner No. 03-5288449 F.3d 1265,2006. CDC.0000115

All the same laws apply to this case.

Mrs. Sieverding specifically asked Judge Nottingham why he dismissed their claims and the only reason he advanced was a preceding related filing. (District of Colorado 02-cv-1950 1/4/06 transcript p.15.) But previous to 02-cv-1950, the Sieverdings never served the defendants and there were no responsive pleadings so there was no claims preclusion because:

> "it is no longer true that a judgment "on the merits" is necessarily a judgment entitled to claim-preclusive effect; and there are a number of reasons for believing that the phrase "adjudication upon the merits" does not bear that meaning in Rule 41(b).... that the effect of the

> "adjudication upon the merits" default provision of Rule 41(b)–and, presumably, of the explicit order in the present case that used the language of that default provision–is simply that, unlike a dismissal "without prejudice," the dismissal in the present case barred refiling of the same claim in the United States District Court for the Central District of California. That is undoubtedly a necessary condition, but it is not a sufficient one, for claim-preclusive effect in other courts". *Semtek Int'l Inc v. Lockheed Martin Corp.* (99-1551) 531 U.S. 497 (2001) 128 Md. App. 39, 736 A. 2d 1104 Supreme Court.

Sieverding quoted *Semtek* repeatedly. Either Judge Nottingham did not know that the preceding complaints in other courts were abandoned without service or he was prejudiced. Possibly he was unaware of the case and did not see it in the Sieverdings' 10-page objection to Magistrate Schlatter's 59-page report.

The Supreme Court has already ruled a judge's ex parte conferences cannot be made harmless error:

> "Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled [409 U.S. 57, 62] to a neutral and detached judge in the first instance." *Ward v. Village of Monroeville*, Supreme Court 409 U.S. 57 (1972)

In the District of Columbia cases simply relied

on Magistrate Schlatter's Report which they submitted to Judge Urbina as if it were valid.

L. Obstruction of court orders

> "Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both. No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime." Title 18 Part 1 Chapter 73 § 1509. Obstruction of court orders.

What is a "order, judgment, or decree of a court of the United States"?

Are not the rules of civil procedure orders so that when the defense counsel takes plaintiffs assets under false pretenses, even though they have no Rule 11 claim to it because the Sieverdings did not lie to the court or the defense attorneys, is not that "obstruction of a court order". When Christopher Beall assumed the role of a criminal prosecutor, except not even making sure that there was the required due process, with the motivation of saving money for his client, did not that violate the Supreme Court's order from *Young v. United States Ex Rel Vuitton*, 107 S. Ct. 2124, 481 U.S. saying:

> "we now reverse, exercising our supervisory

> power, and hold that counsel for a party that is the beneficiary of a court order may not be appointed to undertake contempt prosecution for alleged violations of that order"?

The Court used its supervisory power in Vuitton when there was a financially motivated prosecutor. Because Beall did exactly what prohibited by the Supreme Court in *Vuitton*, he should be found in contempt.

The Sieverdings have no other options for relief that they know of, and they are really in a bad situation since they are already exhausted and now the defense counsel wants to take their financial assets including their livelihood as self-employed people. Their written rights were violated in an organized way by the defense attorneys. The Supreme Court should order relief from the unscrupulous lawyers.

Officers of the Court take an oath:

> "as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States." (*United States Supreme Court Admission to the Bar*).

To be admitted in federal court, an attorney must also be admitted in the local state and agree to support the constitution of the state. Part of that should mean that they agree that they will not subject people to insurance companies operating contrary to state regulatory requirements. Should not lawyers be found in contempt of court when they contract to represent insurance companies that are doing business

in a state as defined by the state but not registered and reporting to state regulators?

The court should use its equity powers when the illegal action of representing an insurance company that has evaded state regulation occurs in its courts.

One reason why the Sieverdings chose self-representation was to save money. That is common. Courts are an integral part of government. If only the wealthy have rights to jury trials, motion hearings, and other procedure developed to ensure a decision on the merits, then this country becomes not a democracy but a plutocracy.

M. Conclusion

The Supreme Court has the legal authority to declare the lawsuits over and find the defendants in default because of their obstruction of justice. The Supreme Court should say clearly that it is not legal to put people in jail because they pursued a civil lawsuit in an honest way and that if someone who is not trained in law is involved with a lawsuit they have enforceable rights even if they are not a lawyer and do not know all the procedures. Everyone should just follow the rules and procedures exactly as they are written. If lawyers cheat their opponents of their due process rights like these lawyers did, they and their clients should be found in default.

The Supreme Court should defend its courts from insurance companies acting to avoid the regulations that state legislatures determined are needed by imposing default if unregistered insurance companies

are paying to defend a customer's claim.

For the reasons above the Sieverdings ask the Supreme Court to order the lower judicial officers to order the defendants to stop threatening the Sieverdings and to pay them all the money from the lawsuits as if the defendants had never filed any papers, i.e. default. The defendants are responsible for their lawyers, who are supposed to consult with them before hurting anyone in their name:

> "In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others." Comment to Rule 1.4 Communication Colorado Rules of Professional Conduct.

Because of the five years of obstruction of justice, the defendants and their lawyers and insurance companies, should pay the Sieverdings. In order to stop these sorts of schemes from being used again, the Supreme Court should find the defendants in default in all four lawsuits. Hopefully that is enough of a penalty to make an impression and deter repetition of obstruction of court orders in order to get advantage in a civil matter.

RELIEF SOUGHT:

Citation of Christopher Beall for Contempt of the Supreme Court.

Order District of Colorado prohibiting collection of the $101,864.82 attorney bill award.

Order District of Colorado to find the defen-

dants in default in 02-cv-1950 on a joint and several basis in the sum certain amount of $15 million plus 12% interest from 3/1/04.

Order District of Kansas to find the defendants in default in 05-cv-2510 on a joint and several basis in the sum certain amount of $3 million.

Order District of Columbia to find the defendants in default in 05-cv-01672 on a joint and several basis in the sum certain amount of $15 million plus 12% interest from 3/1/04.

Order District of Columbia to find the defendants in default in 05-cv-02122 on a joint and several basis in the sum certain amount of $5.72 million.

Prohibition of injunctions against self-representation issued or affirmed by the District of Colorado, 10th Circuit Court of Appeals, and District of Columbia.

APPENDIX A

"ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION"

UNITED STATES COURT DISTRICT OF COLORADO 02-1950

KAY SIEVERDING; DAVID SIEVERDING, Plaintiffs-Appellants, and ED SIEVERDING; [MINOR] SIEVERDING, Plaintiffs,

v.

COLORADO BAR ASSOCIATION, and their insurance company (true name unknown); CITY OF STEAMBOAT SPRINGS, CO, a municipality (hereinafter the CITY); AMERICAN BAR ASSOCIATION, and their insurance company (true name unknown); JANE BENNETT, private person acting in conspiracy with CITY policy makers; KEN BRENNER, individually and in his capacity as a CITY Council Member; JAMES ENGLEKEN, individually and in his capacity as CITY Council Member; ART FIEBING, individually and as employed as CITY assistant chief of police; SANDY FIEBING, individually and as the CITY code enforcement officer; DANIEL FOOTE, Attorney, individually and in his capacity as Assistant CITY attorney; J. D. HAYS, individually and in capacity as CITY director of public safety; JAMES "SANDY" HORNER, individually and as an attorney working for KLAUZER & TREMAINE and his insurance company; ANTHONY LETTUNICH, individually and in capacity as CITY attorney and his insurance; PAUL R. MCLIMANS, individually and in capacity

as a district attorney and his insurance company; WENDIE SCHULENBURG, also known as Wendie Rooney, individually and in capacity as CITY planning services director; and her insurance; MELINDA SHERMAN, individually and former Assistant CITY attorney, and in capacity, and their insurance; KERRY ST. JAMES, individually and in capacity as deputy or assistant district attorney; and his insurance; ARIANTHE STETTNER, individually and in capacity as CITY council member; PAUL STRONG, individually and in capacity as CITY Council Member; and his insurance company; RICHARD TREMAINE, individually and in capacity as an attorney; and his insurance company; JAMES WEBER, individually and in capacity as CITY public works director; and his insurance company; P. ELIZABETH WITTEMYER, individually and in capacity as Deputy District attorney; and her insurance; JAMES B.F. OLIPHANT, Bennett's attorney and purchaser of plaintiff's home; KEVIN BENNETT, individually and in capacity as CITY Council member; DAVID BROUGHAM, individually and in capacity as apparent CITY insurance agent (for CIRSA); KATHY CONNELL, individually and as employed as CITY Council Member; HALL & EVANS, LLC, and their insurance; KLAUZER & TREMAINE, a law firm, and insurance (true name unknown); RANDALL KLAUZER, individually and in capacity as an attorney and his insurance company; SUZANNE SCHLICHT, individually and in capacity as newspaper publisher and her insurance; STEAMBOAT PILOT & TODAY NEWSPAPER, (WORLDWEST LIMITED LIABILITY COMPANY) and insurance (true name unknown), Defendants-Appellees, and CHARLES LANCE, At-

torney, individually and in capacity as former district attorney and his insurance; CIRSA, insurance for the CITY; INSURANCE AGENT, other than Brougham and decision makers for CIRSA (true name unknown); DAVIS, GRAHAM & STUBBS, LLC; JAMES GARRECHT, in capacity as district court judge; (for injunctive relief only since he is immune from suit for damages); PAUL HUGHES, individually and in capacity as CITY manager, Defendants.

This matter is before the court on the "Recommendation of United States Magistrate Judge" filed October 14, 2003. After an extensive, time-consuming analysis of the background and facts, the magistrate judge recommends that (1) the case be dismissed with prejudice 2) Plaintiff Kay Sieverding (and her husband) be required to pay all costs and attorney fees incurred by all defendants since January 30, 2003, and (3) plaintiffs be enjoined from filing further lawsuits based on the series of transactions underlying their complaint, unless plaintiffs are represented by counsel in any such lawsuits. Plaintiffs have objected to the recommendation. The objections suffer from the same defects as plaintiffs' other submissions. They are prolix, disorganized, incomprehensible and (to the extent that the court can discern any thread in the argument) legally twisted. I have conducted the requisite de novo of the issues, the record, and the recommendation. Based on this review, I have concluded that the recommendation is a correct application of the facts and the law. Accordingly, it is Ordered as follows: 1.) The recommendation (#188) is accepted and adopted as this court's ruling on the case. All motions to dismiss are granted. 2.) Plaintiff's myriad motions for sanctions

are all denied. 3.) The case is hereby dismissed with prejudice. 4.) Plaintiff Kay Sieverding (and her husband) shall pay all attorney fees and costs incurred by all defendants since January 30, 2003. 5.) Plaintiffs are hereby enjoined and prohibited from commencing litigation in this or any other court based on the series of transactions described in this case, unless they are represented by counsel. 6.) All other pending motions are denied as moot or meritless. 7.) The case is hereby recommitted to the assigned magistrate judge for consideration of the attorney fees and costs to be awarded and a recommendation concerning those fees and costs. Dated this 19th day of March, 2004. By the Court Edward W. Nottingham."

APPENDIX B

ORDER AND JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Nos. 04-1108, 04-1143, 04-1152

126 Fed.Appx. 457, 2005.C10.0000379

April 22, 2005

KAY SIEVERDING; DAVID SIEVERDING, Plaintiffs-Appellants, and ED SIEVERDING; [MINOR] SIEVERDING, Plaintiffs,

v.

COLORADO BAR ASSOCIATION, and their insurance company (true name unknown); CITY OF STEAMBOAT SPRINGS, CO, a municipality (hereinafter the CITY); AMERICAN BAR ASSOCIATION, and their insurance company (true name unknown); JANE BENNETT, private person acting in conspiracy with CITY policy makers; KEN BRENNER, individually and in his capacity as a CITY Council Member; JAMES ENGLEKEN, individually and in his capacity as CITY Council Member; ART FIEBING, individually and as employed as CITY assistant chief of police; SANDY FIEBING, individually and as the CITY code enforcement officer; DANIEL FOOTE, Attorney, individually and in his capacity as Assistant CITY attorney; J. D. HAYS, individually and in capacity as CITY director of public safety; JAMES "SANDY" HORNER, individually and as an attorney working for KLAUZER & TREMAINE and his insurance company; ANTHONY LETTUNICH, individually

and in capacity as CITY attorney and his insurance; PAUL R. MCLIMANS, individually and in capacity as a district attorney and his insurance company; WENDIE SCHULENBURG, also known as Wendie Rooney, individually and in capacity as CITY planning services director; and her insurance; MELINDA SHERMAN, individually and former Assistant CITY attorney, and in capacity, and their insurance; KERRY ST. JAMES, individually and in capacity as deputy or assistant district attorney; and his insurance; ARIANTHE STETTNER, individually and in capacity as CITY council member; PAUL STRONG, individually and in capacity as CITY Council Member; and his insurance company; RICHARD TREMAINE, individually and in capacity as an attorney; and his insurance company; JAMES WEBER, individually and in capacity as CITY public works director; and his insurance company; P. ELIZABETH WITTEMYER, individually and in capacity as Deputy District attorney; and her insurance; JAMES B.F. OLIPHANT, Bennett's attorney and purchaser of plaintiff's home; KEVIN BENNETT, individually and in capacity as CITY Council member; DAVID BROUGHAM, individually and in capacity as apparent CITY insurance agent (for CIRSA); KATHY CONNELL, individually and as employed as CITY Council Member; HALL & EVANS, LLC, and their insurance; KLAUZER & TREMAINE, a law firm, and insurance (true name unknown); RANDALL KLAUZER, individually and in capacity as an attorney and his insurance company; SUZANNE SCHLICHT, individually and in capacity as newspaper publisher and her insurance; STEAMBOAT PILOT & TODAY NEWSPAPER, (WORLDWEST LIMITED LIABILI-

TY COMPANY) and insurance (true name unknown), Defendants-Appellees, and CHARLES LANCE, Attorney, individually and in capacity as former district attorney and his insurance; CIRSA, insurance for the CITY; INSURANCE AGENT, other than Brougham and decision makers for CIRSA (true name unknown); DAVIS, GRAHAM & STUBBS, LLC; JAMES GARRECHT, in capacity as district court judge; (for injunctive relief only since he is immune from suit for damages); PAUL HUGHES, individually and in capacity as CITY manager, Defendants.

ORDER AND JUDGMENT

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted without oral argument.

Plaintiffs-appellants, formerly residents of Steamboat Springs, Colorado, appeal from the dismissal of their suit, which purported to state claims against numerous defendants who allegedly violated appellants' legal rights with regard to zoning decisions that affected appellants and their former neighbors. Although appellants filed three separate appeals, all of them challenge the same final judgment entered by the district court on March 19, 2004.

We have reviewed the voluminous district court record. In our view, the magistrate judge performed a Herculean feat in his sixty-one page recommendation filed on October 14, 2003. He made as much sense as possible of appellants' numerous complaints

and amended complaints, and cogently explained: (1) why they had no valid claim and their suit should be dismissed with prejudice; (2) why they should be required to pay defendants' costs and fees since January 30, 2003; and (3) why they should be enjoined from commencing further litigation regarding these events without first obtaining counsel. The district court reviewed the record de novo, and adopted the magistrate judge's recommendation in full.

Appellants' "arguments" on appeal are incomprehensible. Based on our review of the district court record, we AFFIRM, as we find no fault with the magistrate judge's analysis, as adopted by the district court. We observe that appellants did not assert error with the imposition of filing restrictions and, therefore, this court will enforce those restrictions.

APPENDIX C

DISTRICT COURT ORDER SHIFTING ATTORNEY BILLS

Civil Action No. 02-cv-01950-EWN-OES, 2006. DCO.0005715 September 27, 2006

KAY SIEVERDING; DAVID SIEVERDING, Plaintiffs-Appellants, and ED SIEVERDING; [MINOR] SIEVERDING, Plaintiffs,

v.

COLORADO BAR ASSOCIATION, and their insurance company (true name unknown); CITY OF STEAMBOAT SPRINGS, CO, a municipality (hereinafter the CITY); AMERICAN BAR ASSOCIATION, and their insurance company (true name unknown); JANE BENNETT, private person acting in conspiracy with CITY policy makers; KEN BRENNER, individually and in his capacity as a CITY Council Member; JAMES ENGLEKEN, individually and in his capacity as CITY Council Member; ART FIEBING, individually and as employed as CITY assistant chief of police; SANDY FIEBING, individually and as the CITY code enforcement officer; DANIEL FOOTE, Attorney, individually and in his capacity as Assistant CITY attorney; J. D. HAYS, individually and in capacity as CITY director of public safety; JAMES "SANDY" HORNER, individually and as an attorney working for KLAUZER & TREMAINE and his insurance company; ANTHONY LETTUNICH, individually and in capacity as CITY attorney and his insurance; PAUL R. MCLIMANS, individually and in capacity

as a district attorney and his insurance company; WENDIE SCHULENBURG, also known as Wendie Rooney, individually and in capacity as CITY planning services director; and her insurance; MELINDA SHERMAN, individually and former Assistant CITY attorney, and in capacity, and their insurance; KERRY ST. JAMES, individually and in capacity as deputy or assistant district attorney; and his insurance; ARIANTHE STETTNER, individually and in capacity as CITY council member; PAUL STRONG, individually and in capacity as CITY Council Member; and his insurance company; RICHARD TREMAINE, individually and in capacity as an attorney; and his insurance company; JAMES WEBER, individually and in capacity as CITY public works director; and his insurance company; P. ELIZABETH WITTEMYER, individually and in capacity as Deputy District attorney; and her insurance; JAMES B.F. OLIPHANT, Bennett's attorney and purchaser of plaintiff's home; KEVIN BENNETT, individually and in capacity as CITY Council member; DAVID BROUGHAM, individually and in capacity as apparent CITY insurance agent (for CIRSA); KATHY CONNELL, individually and as employed as CITY Council Member; HALL & EVANS, LLC, and their insurance; KLAUZER & TREMAINE, a law firm, and insurance (true name unknown); RANDALL KLAUZER, individually and in capacity as an attorney and his insurance company; SUZANNE SCHLICHT, individually and in capacity as newspaper publisher and her insurance; STEAMBOAT PILOT & TODAY NEWSPAPER, (WORLDWEST LIMITED LIABILITY COMPANY) and insurance (true name unknown), Defendants-Appellees, and CHARLES LANCE, At-

torney, individually and in capacity as former district attorney and his insurance; CIRSA, insurance for the CITY; INSURANCE AGENT, other than Brougham and decision makers for CIRSA (true name unknown); DAVIS, GRAHAM & STUBBS, LLC; JAMES GARRECHT, in capacity as district court judge; (for injunctive relief only since he is immune from suit for damages); PAUL HUGHES, individually and in capacity as CITY manager, Defendants.

The opinion of the court was delivered by: Judge Edward W. Nottingham

This matter has come to the attention of the court on docket #755, a motion filed by some of the Defendants for fees motion the court has reviewed various pleadings and orders entered in this case, commencing with this court's order of March 19, 2004, which accepted a thorough recommendation of the assigned magistrate judge, dismissed the case, and awarded Defendants attorney fees and costs incurred from January 30, 2003 forward. This review has disclosed a number of important matters which have been overlooked in the welter of filings with which Ms. Kay Sieverding has relentlessly peppered the court and Defendants' counsel. The court will now attempt to address these matters and get the case back on track for further proceedings in this court and/or the court of appeals.

The court's order of March 19, 2004, as noted, required Plaintiffs Kay and David Sieverding to pay attorney fees and costs incurred by all Defendants from January 30, 2003 forward. The order went on to recommit the litigation to the magistrate judge

"for consideration of the attorney fees and costs to be awarded and a recommendation concerning those fees and costs." (Emphasis supplied.) On March 24, 2004, the clerk entered Final Judgment on the March 19 order. This judgment was final and appealable, even though the matter of attorney fees remained pending in this court. See, e.g., Pa. Nat'l Mut. Cas. Ins.Co. v. City of Pittsburg, 987 F.2d 1516, 1518 (10th Cir. 1993). Plaintiffs did appeal, and the United States Court of Appeals for the Tenth Circuit affirmed this court's judgment on April 22, 2005.

Meanwhile, the litigation concerning attorney fees proceeded before the magistrate judge. On May 14, 2004, the magistrate judge issued an order awarding fees and costs to Defendants, notwithstanding that this court had mandated a recommendation in its March 19 order. The court believed - and continues to believe - that a magistrate judge does not have authority to enter a final order or judgment concerning attorney fees, but only to make a recommendation. E.g., Rajaratnam v. Moyer, 47 F.3d 922, 923--24 (7th Cir. 1995); Estate of Conners by Meredith v. O'Connor, 6 F.3d 656, 658--59 (9th Cir.1993); cf. Colorado Bldg. & Constr. Trades Council v. B.B. Andersen Constr. Co., 879 F.2d 809, 811 (10th Cir.1989) (stating that a magistrate assigned additional duties under section 636[b][3] "remains constantly subject to the inherent supervisory power of the district judge"). Thus, the overlooked or unresolved matter which the court must address is the magistrate judge's ruling of May 14, 2004 concerning attorney fees. Because the ruling involved a final disposition of the questions concerning attorney fees, the court will treat it as a recom-

mendation.

On June 3, 2004, Plaintiffs filed objections to the magistrate judge's recommendation. The court must review the objections under the de novo standard of review. The court has done so. The objections are, characteristically, rambling, prolix, and sometimes incomprehensible. They are organized under eighteen main sections headed by capital letters, many of which contain myriad sub-sections. The court will refer to the lettered sections in this ruling.

Plaintiffs mistakenly take the position that, since they appealed the judgment of dismissal, this court lacked jurisdiction to consider attorney fees (sections A, B, C). This is wrong as a matter of law. See Pa. Nat'l Mut. Cas. Ins.Co. V. City of Pittsburg, supra, 987 F.2d at 1518. Even if it were right, the Tenth Circuit has affirmed the dismissal and issued its mandate. This court has thus re-acquired jurisdiction.

For the most part, Plaintiffs' objections are an attempt to reargue the merits of the dismissal or to assert that they should have prevailed in their appeal (sections D, E, G) or are without merit as a matter of fact and law (sections F, H, J [in part] K, M, N, O, P, Q, and R). There is only one issue on which the court agrees with Plaintiffs.

In section J, they argue that the magistrate judge mistakenly awarded $10,000 in fees to the American Bar Association. The court has searched for documentation supporting this award but has located none. The notation in the recommendation is that the award is "per order of court." Except for the recommendation itself, however, the court has not been able

to locate an order, which would support the award. This aspect of the award, then, must be rejected. Otherwise, the court will accept the recommendation.

The court now turns to the motion which precipitated this review of the record - the request of some Defendants for fees and costs incurred after the date of the magistrate judge's recommendation, May 14, 2004. Some of these fees are ripe for determination - for example, the fees incurred in defending against the frivolous appeal of this court's dismissal of the case. Other parts are not so ripe - for example, the fees incurred in pursuing remedies against Kay and David Sieverding for contempt of court. Kay Sieverding has appealed this court's finding of contempt and the matter is before the Tenth Circuit. She has also appealed the magistrate judge's "ruling" on attorney fees, even though it now appears that the ruling was not final and that no judgment for fees has heretofore been entered. These issues, too, are before the Tenth Circuit. The appellate court may issue a ruling, which would call into question the entitlement to fees. In any event, the court's ruling on the appeal will likely generate still another supplemental request for fees. In these circumstances, this court exercises its discretion to postpone resolution of the motion at issue until the appellate court resolves any appeal, so that all fee questions can be addressed in a single proceeding.

In accordance with the foregoing findings and conclusions, it is ORDERED as follows:

1. The magistrate judge's ruling/recommendation concerning fees, filed May 14, 2004 (#487) is ACCEPTED in part and REJECTED in part. It is reject-

ed insofar as it recommends an award in favor of the American Bar Association in the amount of $10,000. It is accepted in all other respects.

2. The clerk shall forthwith enter a Final Judgment Concerning Attorney Fees in favor of Defendants and against Plaintiffs Kay and David Sieverding in the total amount of $101,864.82, allocated as follows: Hall & Evans $21,547.61; Lettunich & Vanderblemen $11,196.00; McConnell Siderius $35,857.00; Feldman, Nagel & Oliphant $8,900.00; Faegre & Benson $12,368.00;White & Steele $11,996.21.

3. The motion for supplemental attorney fees (#755) is DENIED without prejudice to renewal at a later point in these proceedings, after the Tenth Circuit has ruled on the issues before it.

4. The following Kay Sieverding motions are DENIED as frivolous: ##893, 896, 897, 899, 900, 902, 904, and 905.

APPENDIX D

10TH CIRCUIT AFFIRMATION OF ATTORNEY FEE SHIFTING:

(06-1439 from District of Colorado 02-1950)

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KAY SIEVERDING; DAVID SIEVERDING, Plaintiffs-Appellants, and ED SIEVERDING; [MINOR] SIEVERDING, Plaintiffs,

v.

COLORADO BAR ASSOCIATION, and their insurance company (true name unknown); CITY OF STEAMBOAT SPRINGS, CO, a municipality (hereinafter the CITY); AMERICAN BAR ASSOCIATION, and their insurance company (true name unknown); JANE BENNETT, private person acting in conspiracy with CITY policy makers; KEN BRENNER, individually and in his capacity as a CITY Council Member; JAMES ENGLEKEN, individually and in his capacity as CITY Council Member; ART FIEBING, individually and as employed as CITY assistant chief of police; SANDY FIEBING, individually and as the CITY code enforcement officer; DANIEL FOOTE, Attorney, individually and in his capacity as Assistant CITY attorney; J. D. HAYS, individually and in capacity as CITY director of public safety; JAMES "SANDY" HORNER, individually and as an attorney working for KLAUZER & TREMAINE and his insurance company; ANTHONY LETTUNICH, individually and in capacity as CITY attorney and his insurance;

PAUL R. MCLIMANS, individually and in capacity as a district attorney and his insurance company; WENDIE SCHULENBURG, also known as Wendie Rooney, individually and in capacity as CITY planning services director; and her insurance; MELINDA SHERMAN, individually and former Assistant CITY attorney, and in capacity, and their insurance; KERRY ST. JAMES, individually and in capacity as deputy or assistant district attorney; and his insurance; ARIANTHE STETTNER, individually and in capacity as CITY council member; PAUL STRONG, individually and in capacity as CITY Council Member; and his insurance company; RICHARD TREMAINE, individually and in capacity as an attorney; and his insurance company; JAMES WEBER, individually and in capacity as CITY public works director; and his insurance company; P. ELIZABETH WITTEMYER, individually and in capacity as Deputy District attorney; and her insurance; JAMES B.F. OLIPHANT, Bennett's attorney and purchaser of plaintiff's home; KEVIN BENNETT, individually and in capacity as CITY Council member; DAVID BROUGHAM, individually and in capacity as apparent CITY insurance agent (for CIRSA); KATHY CONNELL, individually and as employed as CITY Council Member; HALL & EVANS, LLC, and their insurance; KLAUZER & TREMAINE, a law firm, and insurance (true name unknown); RANDALL KLAUZER, individually and in capacity as an attorney and his insurance company; SUZANNE SCHLICHT, individually and in capacity as newspaper publisher and her insurance; STEAMBOAT PILOT & TODAY NEWSPAPER, (WORLDWEST LIMITED LIABILITY COMPANY) and insurance (true name unknown),

Defendants-Appellees, and CHARLES LANCE, Attorney, individually and in capacity as former district attorney and his insurance; CIRSA, insurance for the CITY; INSURANCE AGENT, other than Brougham and decision makers for CIRSA (true name unknown); DAVIS, GRAHAM & STUBBS, LLC; JAMES GARRECHT, in capacity as district court judge; (for injunctive relief only since he is immune from suit for damages); PAUL HUGHES, individually and in capacity as CITY manager, Defendants.

Kay and David Sieverding appeal from the district court's judgment awarding attorney's fees in favor of defendants and against them in the amount of $101,864.82. We exercise jurisdiction pursuant to 28 U.S.C. section 1291 and affirm. The parties are intimately familiar with the factual and procedural background of this appeal so our background discussion will be abbreviated. This appeal stems from a complaint the Sieverdings filed against defendants in 2002. In October 2003, the magistrate judge entered a recommendation that plaintiffs' complaint be dismissed, that they be ordered to pay attorney's fees and costs as a sanction for violating Rule 11, and that filing restrictions be entered against them. In March 2004, the district court entered an order adopting the magistrate judge's recommendation in all respects. The district court then recommitted the matter to the magistrate judge to determine the amount of the attorney's fees and costs to be awarded to defendants. The Sieverdings filed three appeals from the district court's March 2004 order, which were consolidated. This court affirmed the district court's order in April 2005. See Sieverding v. Colo. Bar Ass'n, 126 F. App'x

457, 459 (10th Cir. 2005) (unpublished) (Sieverding I). While the appeal was pending, the magistrate judge ordered supplemental briefing from the parties on the amount of the attorney's fees and costs. The magistrate judge then entered an order in May 2004 awarding specific amounts of fees and costs to the individual defendants. In June 2004, the Sieverdings filed objections to the magistrate judge's order. In September 2006, the district court construed the magistrate judge's May 2004 order as a recommendation and accepted it in part and rejected it in part. The district court then entered a final judgment awarding specific amounts of attorney's fees and costs to the individual defendants. The Sieverdings now appeal from this judgment. Appellees have filed a motion to dismiss pursuant to the fugitive disentitlement doctrine. We deny this motion because this appeal is ripe for a decision on the merits. Appellees argue that our decision in Sieverding I previously determined the Sieverding's liability for fees and costs. Although we did affirm the district court's judgment in Sieverding I, we made no express determination as to the Sieverding's liability for fees and costs. Any implied decision on the attorney's fee issue in Sieverding I would not be binding on this panel because this court lacked jurisdiction to review the attorney's fee determination at that time because the award had not yet been reduced to a sum certain. See Am. Soda, LLP v. U.S. Filter Wastewater Group, Inc., 428 F.3d 921, 924-25 (10th Cir. 2005). We review for abuse of discretion the district court's decision to impose Fed. R. Civ. P. 11 sanctions in the form of attorney's fees and costs. See White v. Gen. Motors Corp., 908 F.2d 675, 678 (10th Cir. 1990). The

Sieverdings have not presented any reasoned argument demonstrating that the district court abused its discretion in awarding attorney's fees and costs as a Rule 11 sanction. Rule 11 provides, in relevant part, that anyone who signs a pleading or other paper certifies "that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the claims therein are: (1) warranted by existing law or by a non-frivolous argument for new or modified law; and (2) supported by evidence or likely to be supported by evidence after discovery and investigation. Fed. R. Civ. P. 11(b). Parties who file lawsuits on a pro se basis must comply with the provisions of Rule 11. Id.

In the magistrate judge's initial October 2003 recommendation regarding the attorney's fee issue, he explained that he had entered an order on January 10, 2003, setting the case for a status conference and notifying the Sieverdings that their claims "appear[ed] to be completely groundless and frivolous, in violation of [Rule 11]." Aplee. App., Vol. III at 344 (quotation omitted). The magistrate judge noted that the January 10 order also informed plaintiffs that his purposes in setting the status conference were two-fold: (1) to discuss with plaintiffs [his] concerns that their claims were groundless, and (2) to attempt to persuade plaintiffs to reconsider their claims in light of the probability that they will be sanctioned and/or ordered to pay legal fees to the defendants who are the subjects of frivolous claims. Id. (quotation omitted). At the January 30 status conference, the magistrate judge "attempted again to impress upon plaintiffs that their claims were groundless and frivolous" and "urged them, again, to

reconsider most, if not all, of their claims in light of the remarks made by [him], and by the attorneys who addressed the court with comments about the groundless nature of the claims against their respective clients." Id. at 345. The magistrate judge then continued his recommendation by detailing the Rule 11 violations in the Sieverdings' complaint and explained again how they had been repeatedly advised and warned by the court and other lawyers that their claims were baseless and frivolous. Id. at 389-91. The magistrate judge explained that his January 10 order and the January 30 status conference "stood as clear notice to plaintiffs of the probability that sanctions would be imposed against them if they failed or refused to withdraw the claims that the court or counsel indicated were frivolous or groundless." Id. at 397. The magistrate judge also discussed the Sieverdings' abusive litigation tactics and the need for compensation to be paid to the defendants who were the victims of this abuse. Id. at 393-94. As noted above, the district court adopted the magistrate judge's recommendation and then recommitted the matter to the magistrate judge to resolve the amount of the sanction. In a thorough and well-reasoned seventeen-page order, the magistrate judge applied the factors identified in our case law for determining the amount of Rule 11 sanctions. See Aplee. App., Vol. IV at 635-651. The district court reviewed de novo the Sieverdings' objections to the magistrate judge's order and accepted the recommendation, with the exception of one portion of the award for fees to the American Bar Association, which it rejected.

The Sieverdings fail to present any argument regarding the reasonableness of the amount of the

award. Because of this, the Sieverdings have waived any challenge to the reasonableness of the award. See State Farm Fire & Cas. Co. v. Mhoon, 31 F.3d 979, 984 n. 7 (10th Cir. 1994) (noting that failure to raise issue in an opening appellate brief waives issue on appeal).

Accordingly, for the reasons stated in the magistrate judge's October 14, 2003 recommendation and May 14, 2004 order, as adopted by the district court in its March 19, 2004 and September 27, 2006 orders, we AFFIRM the district court's judgment awarding fees in the amount of $101,864.82 in favor of defendants and against the Sieverdings. We DENY all outstanding motions. Monroe G. McKay Circuit Judge

APPENDIX E

ORDER DISMISSING DISTRICT OF KANSAS COMPLAINT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 05-2510 JWL

2006.DKS.0000159

April 6, 2006

KAY SIEVERDING PLAINTIFF,

v.

WORLDWEST LIMITED LIABILITY COMPANY DEFENDANTS.

The opinion of the court was delivered by: John W. Lungstrum

United States District Judge

MEMORANDUM AND ORDER

Plaintiff Kay Sieverding filed suit on December 8, 2005, against Worldwest Limited Liability Company ("Worldwest") alleging claims for defamation per se, intentional infliction of emotional distress, false light publicity, First Amendment retaliation, obstruction of justice, intentional interference with economic advantage, and tortious criminal defamation.

This matter comes before the court on two motions filed by Ms. Sieverding. On February 21, 2000, she filed an amended motion to dismiss without prejudice (doc. 18). On March 7, 2006, she filed a motion to stay (doc. 19). For the reasons explained below, the

court will grant her motion to dismiss without prejudice and deny her motion to stay.

ANALYSIS

The court possesses discretion whether to grant a motion to stay. Reed v. Bennett, 312 F.3d 1190, 1193 n.1 (10th Cir. 2002) (citing Ben Ezra, Weinstein, and Co., Inc. v. America Online Inc., 206 F.3d 980, 987 (10th Cir. 2000)). "The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Air Line Pilots Ass'n v. Miller, 523 U.S. 866, 879 (1998) (citation omitted). Although the court has discretion to grant the motion, "[t]o be sure, the movant 'bears the burden of establishing its need' for such a stay." LaSala v. Needham & Co., Inc., 399 F. Supp. 2d 421, 427 (S.D.N.Y. 2005) (citation omitted).

In support of her motion to stay, Ms. Sieverding states:

Would it be possible to modify the motion to dismiss to a motion to stay, without going to jail, while Sieverding pursues her appeal for return of her rights as a U.S. Person, so that Sieverding won't have to repay the filing and service expenses? Sieverding believes that the 10th Circuit will return her rights as a U.S. Person since there is no basis in federal procedure to remove the rights to pursue an action pro se, there was no finding of fraud or misconduct on her part, Rule 65 procedure was not followed, and there were no hearings on proposed injunction. The District of Colorado has a special form for a preliminary injunction but it was not used. It has a line for a law to

be filled in, but no law was cited, other than the broke prisoner free filing law, which is not applicable.

Based on this unsupported request, the court is not persuaded to stay the matter, but rather, believes dismissal is appropriate. There is no support in the Tenth Circuit that a motion to stay must be granted simply because a plaintiff wants to avoid a filing fee. Additionally, Ms. Sieverding recently was incarcerated for not complying with a court order in the United States District Court in the District of Colorado to not file a lawsuit without counsel. See Sieverding v. Faegre & Benson, LLP, 2005 WL 1431577, *2 (D. Minn. 2005) (explaining that the district court in Colorado "enjoined and prohibited [plaintiffs] from commencing litigation in this or any other court based on the series of transactions described in this case, unless they are represented by counsel", which the Tenth Circuit affirmed, "including the imposition of filing restrictions.") (citing Sieverding v. Colo. Bar Ass'n, 2005 WL 928748 (10th Cir. 2005))

Ms. Sieverding has filed numerous pro se complaints in federal district courts across the country, and in recently affirming the filing restriction imposed by the district court in Colorado, the Tenth Circuit opined that her "'arguments' on appeal are incomprehensible." Id. The court also draws support from another district court opinion granting a similar motion to dismiss without prejudice in a related suit filed by Ms. Sieverding:

Part of the Colorado court's reason for imposing filing restrictions on plaintiffs was the frequency, quantity, and confusing nature of plaintiffs' filings. The

Court notes that in the approximately seven months since filing their complaint in this court, plaintiffs have filed no less than 38 motions, in addition to a number of other letters, responses, and objections. Even a cursory glance at these documents reveals that many are, at best, unnecessarily verbose and confusing, or, at worst, simply frivolous. The Court, accordingly, agrees with the Colorado court that plaintiffs require the assistance of an attorney to ensure that their claims are presented coherently and according to applicable rules, and that any representation to or request of the Court rests on sound legal grounds. This will ensure that neither the Court's nor the plaintiffs' time and resources are unnecessarily wasted.

Given the state of affairs and the importance of Ms. Sieverding complying with the court order not to file lawsuits without counsel, the court declines to exercise its discretion to grant the motion to stay and instead opts to grant her motion to dismiss without prejudice. See Chestra v. Kansas, 34 Fed. Appx. 609, 610 (10th Cir. 2002) ("[Plaintiff] asserts that the district court should have granted his motion to stay the proceedings rather than dismiss without prejudice. We find that the district court did not abuse its discretion in dismissing without prejudice rather than staying the proceedings.").

IT IS THEREFORE ORDERED BY THE COURT that the motion to dismiss without prejudice (doc. 18) is granted, and the motion to stay (doc. 19) is denied.

IT IS THEREFORE ORDERED BY THE COURT that the motion to dismiss without prejudice

(doc. 18) is granted, and the motion to stay (doc. 19) is denied.

IT IS THEREFORE ORDERED BY THE COURT that the motion to dismiss without prejudice (doc. 18) is granted, and the motion to stay (doc. 19) is denied.

APPENDIX F

10TH CIRCUIT AFFIRMATION OF ORDER DISMISSING DISTRICT OF KANSAS COMPLAINT

Sieverding v. World West Limited Liability Co., 204 Fed.Appx. 743 (10th Cir. 10/31/2006)

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 06-3178

KAY SIEVERDING, PLAINTIFF-APPELLANT,

v.

WORLD WEST LIMITED LIABILITY COMPANY, DEFENDANT-APPELLEE.

(D.C. No. 05-CV-2510-JWL) (D. Kan.).

The opinion of the court was delivered by: Bobby R. Baldock Circuit Judge

ORDER AND JUDGMENT

Before BARRETT, ANDERSON, and BALDOCK, Circuit Judges.

Kay Sieverding, proceeding pro se, appeals from the dismissal of her suit against Worldwest LLC. The district court dismissed Ms. Sieverding's suit by granting a motion filed by Ms. Sieverding to dismiss the case without prejudice. As a general rule, an order granting a motion to voluntarily dismiss without prejudice is not appealable. See Bryan v. Office of Personnel Management, 165 F.3d 1315, 1321 (10th Cir. 1999) ("Because [the plaintiff] voluntarily moved to dismiss, she could not appeal the district court's order").

Ms. Sieverding claims on appeal that her dismissal was not voluntary because she stated in her motion that she was moving to dismiss the suit under duress of jail. While it is true that Ms. Sieverding's motion states that she is moving to dismiss under duress of jail, that does not change the fact that she herself filed the motion and asked the court to dismiss the suit. The district court then granted the requested relief. Because the district court was acting on Ms. Sieverding's own request to dismiss the suit without prejudice, she may not now appeal the district court's decision to grant the requested relief. See Coffey v. Whirlpool Corp., 591 F.2d 618, 620 (10th Cir. 1979) ("[W]here the dismissal is upon motion of the plaintiffs themselves, as here, we will not permit those plaintiffs to appeal, saying that the court should not have granted their own motion."). The appeal is DISMISSED for lack of jurisdiction. All outstanding motions are DENIED.

APPENDIX G

DISTRICT OF COLUMBIA DISMISSAL WITH PREJUDICE.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

KAY SIEVERDING et al.,

Plaintiffs,

Civil Action No.:

05-1672 (RMU)

v.

Civil Action No.:

05-2122 (RMU)

AMERICAN BAR ASSOCIATION et al., :

Defendants.

MEMORANDUM ORDER

DISMISSING THE

COMPLAINTS

SUA SPONTE

I. INTRODUCTION

This matter comes before the court on the defendants' motions to dismiss the abovecaptioned cases. The pro se plaintiffs, members of the Sieverding family, bring suit to set aside two adverse judgments on the basis of fraud. The first judgment that the plaintiffs wish to set aside is a restraining order issued by Judge Nottingham of the Routt County Court in

Colorado against plaintiff Kay Sieverding. The second judgment is an order of the United States District

Court for the District of Colorado sanctioning the plaintiffs under Federal Rule of Civil Procedure 11, dismissing their case with prejudice and enjoining the plaintiffs from initiating further litigation on issues relating to the same transaction or series of transactions without counsel. Several defendants move to dismiss the cases, arguing, inter alia, that the court lacks

personal jurisdiction over them. Defendant American Bar Association ("ABA") moves to dismiss the case on the basis of, inter alia, res judicata. Because this court's previous decision in Civil Action No. 05-1283 bars the plaintiffs' claims in the instant suits, the court sua sponte dismisses the complaints on the basis of res judicata.

II. BACKGROUND

A. Factual Background

This case grows out of a heated property dispute between neighbors in Steamboat, Colorado. Sieverding v. Am. Bar Ass'n et al., Civil Action No. 05-1283, slip op. at 2 (D.D.C.July 17, 2006). In 1992, the Bennett family erected a fence around their property that claimed part of a road adjacent to the plaintiffs' home. Id. The plaintiffs objected to what they perceived as zoning violations and tensions between the families escalated, culminating in the issuance of a restraining order against Kay Sieverding. Id.

The plaintiffs have brought suits challenging the restraining order in at least two state court ac-

tions and numerous federal court actions. Id. at 3. In their suit in the United States District Court for the District of Colorado before Magistrate Judge Schlatter, the plaintiffs brought suit against all the defendants party to this case. Id. After a painstakingly thorough review of the plaintiffs' "verbose, prolix, and impossible to understand" complaint, Magistrate Judge Schlatter recommended that the court sanction the plaintiffs, dismiss the case with prejudice, and enjoin the plaintiffs from further litigating issues based on the transactions or serious of transactions underlying the case, unless represented by counsel. Id. Judge Nottingham of the district court adopted Magistrate Schlatter's recommendations in full. Id. The Tenth Circuit Court of Appeals affirmed the district court's decision. Sieverding v. Colo. Bar Ass'n, 2005 WL 928748, at * 1 (10th Cir. Apr. 22, 2005) (unpublished opinion). In response to the Tenth Circuit's ruling, the plaintiffs have filed suits in numerous courts across the nation, in some cases filing multiple suits in the same court.

B. Procedural Background

On June 27, 2005, the plaintiffs brought an independent action in this court to set aside the Routt County Court and district court of Colorado judgments on the basis of fraud. Sieverding, Civil Action No. 05-1283, slip op. at 1 n.1. The court dismissed that complaint on July 17, 2006, concluding that the Tenth Circuit's ruling had a res judicata effect. In their current complaints, the plaintiffs allege that the defendants conspired with Judge Nottingham in Colorado. Compl. at 1. Several defendants now move to dismiss

the case, arguing, inter alia, that the court lacks personal jurisdiction and that the Tenth Circuit's ruling has a res judicata effect on the cases pending before this court. Because this court's decision in Civil Action No. 05-1283 has a res judicata effects, the court sua sponte dismisses the plaintiffs' complaints.

II. ANALYSIS

1. Legal Standard for Res Judicata

"The doctrine of res judicata prevents repetitious litigation involving the same causes of action or the same issues." I.A.M. Nat'l Pension Fund v. Indus. Gear Mfg. Co., 723 F.2d 944, 946 (D.C. Cir. 1983). Res judicata has two distinct aspects – claim preclusion and issue preclusion (commonly known as collateral estoppel) – that apply in different circumstances and with different consequences to the litigants. NextWave Pers. Commc'n, Inc. v. Fed. Commc'n

Comm'n, 254 F.3d 130, 142 (D.C. Cir. 2001) (citing id.); Novak v. World Bank, 703 F.2d 1305, 1309 (D.C. Cir. 1983). Under claim preclusion, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Drake v. Fed. Aviation Admin., 291 F.3d 59, 66 (D.C. Cir. 2002) (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)). Under issue preclusion or collateral estoppel, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." Yamaha Corp. of Am. v. United States, 961 F.2d 245, 254 (D.C. Cir. 1992) (quoting Allen, 449 U.S. at 94). In short, "claim preclusion

forecloses all that which might have been litigated previously," while issue preclusion "prevents the relitigation of any issue that was raised and decided in a prior action." I.A.M. Nat'l Pension Fund, 723 F.2d at 949; Novak, 703 F.2d at 1309. In this way, res judicata helps "conserve judicial resources, avoid inconsistent results, engender respect for judgments of predictable and certain effect, and [] prevent serial forum-shopping and piecemeal litigation." Hardison v. Alexander, 655 F.2d 1281, 1288 (D.C. Cir. 1981); see also Allen, 449 U.S. at 94.

Because "res judicata belongs to courts as well as to litigants," a court may invoke resjudicata sua sponte. Stanton v. D.C. Ct. of Appeals, 127 F.3d 72, 77 (D.C. Cir. 1997); see also Tinsley v. Equifax Credit Info. Servs., Inc., 1999 WL 506720, at *1 (D.C. Cir. 1999) (per curiam) (noting that a district court may apply res judicata upon taking judicial notice of the parties' previous case).

2. The Plaintiffs' Claims are Barred by Res Judicata

The plaintiffs' claims are barred by res judicata because they are claims that could have been raised in Civil Action No. 05-1283. I.A.M. Nat'l Pension Fund, 723 F.2d at 949. The plaintiffs' complaint in Civil Action No.05-1283 alleges that the defendants conspired with officers of the Rott County Court. Compl. (Civil Action No. 05-1283) at 6. The plaintiffs' complaint in Civil Action No. 05-1672 charges that officers of the Routt County Court in Colorado violated the plaintiffs' rights. Compl.(Civil Action No. 05-1672) at 40. The complaint in Civil Action No. 05-2122 alleges that the

defendants conspired with Judge Nottingham. Compl. (Civil Action No. 05-2122) at 2. That is, all complaints charge, pursuant to different legal theories, that officers of the Routt County Court or of the District Court of Colorado aggrieved the plaintiffs. The plaintiffs do not state why they did not bring these claims in the earlier action before this court, nor can the court discern a reason for the plaintiffs' decision to file multiple suits based on the same set of events. This court echoes the sentiment expressed in Griffin v. Federal Deposit Insurance Corporation: "A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome . . . the [plaintiff] had [his] day in court." Griffin v. Fed. Deposit Ins. Corp., 831 F.2d 799, 803 (8th Cir. 1987). Because the plaintiffs are seeking "a second bite [at] the apple by arguing a different legal theory using the same core facts, which is barred by res judicata," Greer v. County of Cook, Il., 54 Fed. Appx. 232, 236 (7th Cir. 2002), the court sua sponte dismisses the plaintiffs' complaints in the above-captioned actions.

Accordingly, it is this 20th day of July, 2006, ORDERED that the plaintiffs' complaint is DISMISSED with prejudice. SO ORDERED.

RICARDO M. URBINA

United States District Judge

APPENDIX H

DISMISSAL OF SIEVERDING APPEAL BY D.C. CIRCUIT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-5126

05cv01283

05cv01672

05cv02122

Filed On: August 8, 2007 [1059247]

David Sieverding, AKA Father, et al.,

Appellants

v.

American Bar Association, et al.,

Appellees

Consolidated with 07-7060, 07-7068

BEFORE: Sentelle, Rogers, and Brown, Circuit Judges

O R D E R Upon consideration of the motions to dismiss the appeals, the consolidated response and supplement thereto, and the consolidated reply, it is

ORDERED that the motions to dismiss be granted and Nos. 07-5126, 07-7060, and 07-7068 be dismissed. In No. 07-5126 (No. 05cv1283), the April 10, 2007 notice of appeal was filed more than 30 days after entry in the

civil docket of the dismissal order and the order denying reconsideration. See Fed. R. App. P. 4(a)(1)(A).

Because appellants' motion for relief from judgment was filed more than ten days after entry of judgment, it was properly construed as having been filed pursuant to Federal Rule of Civil Procedure 60(b) and did not suspend the time for filing an appeal from the initial order. See Fed. R. App. P. 4(a)(4). Under this rule, the time runs from the date the order is entered, with no additional allowance made for service by mail. See also Fed. R. Civ. P. 59(e). Nor do appellants' successive motions for reconsideration of the denial of reconsideration suspend the running of the appeal period. See Fed. R. App. P. 4(a)(4); American Security Bank, N.A. v. John Y. Harrison Realty, Inc., 670 F.2d 317 320-21 (D.C. Cir. 1982) (motion for reconsideration of motion for new trial and other postjudgment relief did not terminate the running of the time for appeal under Rule 4); Glinka v. Maytag Corp., 90 F.3d 72 (2d Cir. 1996) (collecting cases holding that subsequent motion for reconsideration does not reset the filing date for notice of appeal).

In No. 07-7060 (No. 05cv1672), the motion for relief from judgment was timely filed under Federal Rule of Civil Procedure 59 and, therefore, suspended the running of the appeal period until the motion was decided on December 21, 2006. See Fed. R. App. P. 4(a)(4). The April 10, 2007 notice, however, was filed more than thirty days thereafter. Finally, in No. 07-7068 (No. 05cv2122), appellants first intend to challenge the dismissal order entered July 20, 2006. Appellants' motion for relief from judgment was filed more than ten days after entry of judgment, so it did not

suspend the time for filing an appeal. See Fed. R. App. P. 4(a)(4). Because the judgment was not set forth on a separate document, however, as required by Federal Rule of Civil Procedure 58(a)(1), the appeal period did not begin to run until December 18, 2006 – the expiration of 150 days from entry of the judgment in the civil docket. See Fed. R. App. P. 4(a)(7)(A)(ii). Even so, the April 16, 2007 notice was untimely to appeal that order as well as the order denying Rule 60(b) relief and enjoining future pro se lawsuits related to the current cases.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

APPENDIX I

AFFIRMATION WITH MODIFICATIONS OF INJUNCTION AGAINST LITIGATION BY 10TH CIRCUIT

Sieverding v. Colorado Bar Association, 469 F.3d 1340 (10th Cir. 11/14/2006)

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 06-1038

469 F.3d 1340, 2006.C10.0001602

November 14, 2006

KAY SIEVERDING, PLAINTIFF-APPELLANT, AND DAVID SIEVERDING; ED SIEVERDING; [Minor] SIEVERDING, PLAINTIFFS,

v.

COLORADO BAR ASSOCIATION, AND THEIR INSURANCE COMPANY (TRUE NAME UNKNOWN); CITY OF STEAMBOAT SPRINGS, CO, A MUNICIPALITY; AMERICAN BAR ASSOCIATION, AND THEIR INSURANCE COMPANY (TRUE NAME UNKNOWN); JANE BENNETT, PRIVATE CITIZEN ACTING IN CONSPIRACY WITH CITY POLICY MAKERS; KEVIN BENNETT, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER; KEN BRENNER, INDIVIDUALLY AND IN CAPACITY AS A CITY COUNCIL MEMBER; DAVID BROUGHAM, INDIVIDUALLY AND IN CAPACITY AS APPARENT CITY INSURANCE AGENT (FOR CIRSA); CIRSA, INSURANCE AGENT FOR THE CITY; INSURANCE AGENT, OTHER THAN BROUGHAM, AND DECI-

SION MAKERS FOR CIRSA (TRUE NAME UNKNOWN); KATHY CONNELL, INDIVIDUALLY AND AS EMPLOYED AS CITY COUNCIL MEMBER; DAVIS, GRAHAM & STUBBS, LLC; JAMES ENGLEKEN, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER; ART FIEBING, INDIVIDUALLY AND AS EMPLOYED AS CITY ASSISTANT CHIEF OF POLICE; SANDY FIEBING, INDIVIDUALLY AND AS THE CITY CODE ENFORCEMENT OFFICER; DANIEL FOOTE, INDIVIDUALLY AND IN CAPACITY AS ASSISTANT CITY ATTORNEY; JAMES GARRECHT, IN CAPACITY AS DISTRICT COURT JUDGE (FOR INJUNCTIVE RELIEF ONLY SINCE HE IS IMMUNE FROM SUIT FOR DAMAGES); J. D. HAYS, INDIVIDUALLY AND IN CAPACITY AS CITY DIRECTOR OF PUBLIC SAFETY; HALL & EVANS, LLC, AND THEIR INSURANCE; JAM ES "SANDY" HORNER, INDIVIDUALLY AND AS ATTORNEY WORKING FOR KLAUZER & TREMAINE AND HIS INSURANCE COMPANY; PAUL HUGHES, INDIVIDUALLY AND IN CAPACITY AS CITY MANAGER; KLAUZER & TREMAINE, A LAW FIRM, AND INSURANCE (TRUE NAME UNKNOWN); RANDALL KLAUZER, INDIVIDUALLY AND IN CAPACITY AS AN ATTORNEY AND HIS INSURANCE COMPANY; CHARLES LANCE, INDIVIDUALLY AND IN CAPACITY AS FORMER DISTRICT ATTORNEY AND HIS INSURANCE; ANTHONY LETTUNICH, INDIVIDUALLY AND IN CAPACITY AS CITY ATTORNEY AND HIS INSURANCE; PAUL R. MCLIMANS, INDIVIDUALLY AND IN CAPACITY AS A DISTRICT ATTORNEY AND HIS INSURANCE COMPANY; WENDIE SCHULENBURG, (A.K.A.

ROONEY), INDIVIDUALLY AND IN CAPACITY AS CITY PLANNING SERVICES DIRECTOR AND HER INSURANCE; MELINDA SHERMAN, FORMER ASSISTANT CITY ATTORNEY, INDIVIDUALLY, AND IN CAPACITY, AND THEIR INSURANCE; KERRY ST. JAMES, INDIVIDUALLY AND IN CAPACITY AS DEPUTY OR ASSISTANT DISTRICT ATTORNEY AND HIS INSURANCE; JAM ES B.F. OLIPHANT, BENNETT'S ATTORNEY AND PURCHASER OF PLAINTIFF'S HOME; SUZANNE SCHLICHT, INDIVIDUALLY AND IN CAPACITY AS NEWSPAPER PUBLISHER AND HER INSURANCE; STEAMBOAT PILOT & TODAY NEWSPAPER, (WORLDWEST LIMITED LIABILITY COMPANY), AND INSURANCE (TRUE NAME UNKNOWN); ARIANTHE STETTNER, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER; PAUL STRONG, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER AND HIS INSURANCE COMPANY; RICHARD TREMAINE, INDIVIDUALLY AND IN CAPACITY AS AN ATTORNEY AND HIS INSURANCE COMPANY; JAMES WEBER, INDIVIDUALLY AND IN CAPACITY AS CITY PUBLIC WORKS DIRECTOR AND HIS INSURANCE COMPANY; P. ELIZABETH WITTEMYER, INDIVIDUALLY AND IN CAPACITY AS DEPUTY DISTRICT ATTORNEY, AND HER INSURANCE, DEFENDANTS-APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. (D.C. No. 02-CV-1950-EW N-OES).

Submitted on the briefs:*fn1 Kay Sieverding, Pro Se.

Patricia J. Larson, Senior Associate General Counsel, American Bar Association, Chicago, Illinois, for Defendant-Appellee American Bar Association.

Thomas B. Kelley, Christopher P. Beall, Faegre & Benson, Llp, Denver, Colorado, John M. Palmeri, Brett Norman Huff, White and Steele, P.C., Denver, Colorado, Michael T. McConnell, Traci L. Van Pelt, Robert W. Steinmetz, McConnell, Siderius, Fleischner, Houghtaling & Craigmile, Llc, Denver, Colorado, David R. Brougham, Hall & Evans, Denver, Colorado, for Defendants-Appellees.

The opinion of the court was delivered by: Baldock, Circuit Judge

PUBLISH

Before BARRETT, ANDERSON, and BALDOCK, Circuit Judges.

Kay Sieverding, proceeding pro se, appeals from the district court's order imposing filing restrictions. We affirm the district court's imposition of filing restrictions, but we conclude that a portion of the order must be modified.

Background

Ms. Sieverding, her husband, and two sons filed a complaint in the District of Colorado in October 2002. The complaint was 106 pages long and set forth claims against thirty-six individuals or entities. The underlying issue in the case related to the alleged violation of the Sieverdings' rights with regard to zoning decisions that affected them and their former neigh-

bors. During the pendency of the case, the Sieverdings filed more than 100 motions. In October 2003, the magistrate judge assigned to the case issued a sixty-one page recommendation that the case be dismissed with prejudice; that the Sieverdings be required to pay defendants' costs and fees; and that they be enjoined from commencing further litigation in the District of Colorado regarding these events without first obtaining counsel. The district court accepted and adopted the recommendations in an order entered on March 19, 2004, but expanded on the magistrate judge's recommended filing restrictions by enjoining the Sieverdings from filing lawsuits related to this subject matter in the District of Colorado or any other court.

The Sieverdings filed three appeals from the March 2004 order in this court and they were consolidated. The district court's order adopting the magistrate judge's recommendation was summarily affirmed on appeal. We observed that "appellants did not assert error with the imposition of filing restrictions and, therefore, this court will enforce those restrictions." Sieverding v. Colo. Bar Ass'n, 126 F. App'x 457, 459 (10th Cir. 2005).

In late 2004 and 2005, the Sieverdings continued filing actions relating to the subject matter of their previous lawsuit. They filed five new civil actions in the federal district courts in Minnesota, Northern Illinois, and the District of Columbia; one new civil action in the state court in Denver County, Colorado; and one appeal in the Eighth Circuit Court of Appeals. In the summer of 2005, the defendants filed a motion requesting a show cause order as to why the Sieverdings should not be sanctioned for violating the filing

restrictions portion of the March 2004 order. On September 2, the district court held a hearing and found the Sieverdings to be in contempt of court for violating the March 2004 order. The district court gave both of the Sieverdings the option of dismissing the lawsuits that remained pending in the District of Columbia and Colorado state court or going to jail. Ms. Sieverding refused to dismiss the lawsuits and was sent to jail. Mr. Sieverding withdrew his name from the pending cases.

On January 4, 2006, Judge Nottingham held a show cause hearing, and ordered Ms. Sieverding to dismiss the remaining lawsuits that had been filed in violation of the March 2004 order. Ms. Sieverding was released from custody with the condition that she dismiss all of her remaining lawsuits by January 11. At that hearing, Judge Nottingham also entered another order, which prohibited Ms. Sieverding from filing any further lawsuits anywhere in this country unless she is represented by a lawyer or unless the district court specifically approves her filing of a given lawsuit. This order broadened the March 2004 order because it was not limited by subject matter. The district court entered a written order on January 31 that memorialized the verbal order from January 4 and gave support for his filing restrictions decision. Ms. Sieverding filed a petition for mandamus from the January 4 order and this court construed it as a notice of appeal from the verbal January 4 order as memorialized in the January 31 order.

Discussion

[T]he right of access to the courts is neither ab-

solute nor unconditional and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." Tripati v. Beaman, 878 F.2d 351, 353 (10th Cir. 1989) (citations omitted) (per curiam). Federal courts have the inherent power "to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances." Id. at 352 (quoting Cotner v. Hopkins, 795 F.2d 900, 902-03 (10th Cir. 1986)). We agree with the district court that filing restrictions were appropriate in this case. We conclude, however, that the restrictions were not carefully tailored as required by our case law and that a portion of the filing restrictions order must be modified.

The substance of the filing restriction states:

Kay Sieverding and David Sieverding are hereafter prohibited from commencing any pro se litigation in any court in the United States on any subject matter unless they meet the requirements of Paragraph 2 below.

R., Vol. I, Doc. 788 at 7 ¶ 1. Paragraph 2 explains that the Sieverdings must seek approval from the District of Colorado before commencing any pro se litigation in any court in the United States on any subject matter. Id. at ¶ 2. The order does not apply if the Sieverdings are represented by a licensed attorney. Id. at ¶ 3.

This filing restrictions order is unlike other filing restrictions orders that have been reviewed by this court because it extends to any court in this country as opposed to being limited to the jurisdiction of the court issuing the order. The order thereby includes ev-

ery state court, every federal district court and every federal court of appeal. Appellees cite to only one case that involved similarly broad filing restrictions, Martin-Trigona v. Lavien, 737 F.2d 1254 (2d Cir. 1984), to support their argument that the breadth of the district court's order was appropriate.

In Martin-Trigona, the Second Circuit was reviewing an order imposing restrictions that enjoined the filing of any action in any state or federal court in the United States arising out of plaintiff's bankruptcy proceedings, unless certain conditions were met. The order did, however, include an exception for certain types of filings, including filings in the federal appellate courts. See id. at 1259 ("Nothing in this order shall be construed as denying [plaintiff] access to the United States Courts of Appeals."). The Second Circuit upheld the portion of the filing restrictions order that prohibited the plaintiff from filing an action in any federal district court in the country without prior permission. See id. at 1262. The court determined, however, that the district court erred by extending the filing restrictions to include state courts, although the court left intact the requirement that Mr. Martin-Trigona notify the state courts regarding his prior litigation history. See id. at 1262-63.

We disagree with the Second Circuit's decision to uphold the broad filing restriction limiting access to any federal district court in the country and we will not uphold such a broad filing restriction in this case. We think it is appropriate for the District of Colorado to impose filing restrictions that include other federal district courts within the Tenth Circuit, but that it is not appropriate to extend those restrictions to include

federal district courts outside of this Circuit. It is not reasonable for a court in this Circuit to speak on behalf of courts in other circuits in the country; those courts are capable of taking appropriate action on their own.

We agree with the Second Circuit's determination that it is not appropriate for a federal district court to restrict access to the state courts. The district court erred in this case by imposing filing restrictions limiting access to any court in the country. Finally, we note that the district court's broad order, unlike the order at issue in Martin-Trigona, fails to include an exception for filings in the federal appellate courts. This was error. It is unreasonable for the District of Colorado to attempt to limit access to this court or any other court of appeal. We are capable of deciding if filing restrictions are appropriate in this court.

In light of our ruling in this case, we note that the district court's March 2004 order is also defective. Although that order is not properly before us and the district court did not have the benefit of this decision when it entered that order, we exercise our supervisory power to instruct the district court that it may not enforce the provisions of the March 2004 order that are inconsistent with this decision. See, e.g., United States v. Ochoa-Vasquez, 428 F.3d 1015, 1029-30 (11th Cir. 2005), cert. denied, No. 05-1524, 2006 WL 1522633 (U.S. Oct. 10, 2006); see generally Cupp v. Naughten, 414 U.S. 141, 146 (1973) (describing supervisory power of appellate courts to review proceedings of trial courts).

Finally, we conclude that the district court's de-

cision to restrict Ms. Sieverding's filings on any subject matter and as to any defendant is overbroad. The district court's M arch 2004 filing restrictions order was properly limited by subject matter and defendant because it prohibited filings based on the series of transactions described in that initial federal action, case number 02-cv-1950. Given Ms. Sieverding's continued filings after that restriction was entered, the district court was justified in expanding the scope of the filing restrictions, but there is no apparent basis for extending the restriction to include any subject matter and any party. Ms. Sieverding has not filed litigation against random persons or entities. Instead, she has focused her efforts on filing actions against the persons, entities, counsel, and insurance companies of the parties involved in 02-cv-1950. We believe the district court's intention, to restrict further abusive filings by Ms. Sieverding, is best accomplished by modifying its order to create a carefully-tailored restriction limiting her ability to file actions against those persons and entities, but without limitation to subject matter. See, e.g.,Martin-Trigona v. Lavien, 737 F.2d at 1263 (instructing district court on remand to craft injunction restricting abusive litigant from filing any actions against parties, counsel, and court personnel involved in prior litigation).

For the foregoing reasons, we affirm the district court's order as modified by this opinion. The portion of the order that states "Kay Sieverding and David Sieverding are hereafter prohibited from commencing any pro se litigation in any court in the United States on any subject matter," R., Vol. I, Doc. 788 at 7 ¶ 1, is modified to prohibit the Sieverdings from commencing

any pro se litigation in any federal district court within the Tenth Circuit against the persons, entities, counsel, and insurance companies of the parties involved in 02-cv-1950. The district court's order is MODIFIED IN PART, and, as modified, is AFFIRMED. All outstanding motions are DENIED

Opinion Footnotes

fn1 After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

APPENDIX J

INJUNCTION AGAINST PRO SE LITIGATION ISSUED BY DISTRICT OF COLUMBIA DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No.: 05-2122 (RMU) Document No. 30

KAY SIEVERDING et al., Plaintiffs,

v.

AMERICAN BAR ASSOCIATION et al.,

Defendants.

MEMORANDUM ORDER

DENYING THE PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT

I. INTRODUCTION

This matter comes before the court on the pro se plaintiffs' motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b).1 The plaintiffs ask the court to vacate its July 20, 2006 order dismissing the complaint sua sponte. The plaintiffs argue that the court erroneously ruled that their claims

were barred by res judicata. Because the plaintiffs' claims are, in fact, barred by res judicata and because the plaintiffs do not meet any of the Rule 60(b) factors, the court denies the plaintiffs' motion for relief from judgment.

Because the plaintiffs do not cite a relevant legal standard in their motion for "reconsideration," the court must determine, as a preliminary manner, whether to analyze the motion under Federal Rule of Civil Procedure 59(e) or 60(b). A motion filed within ten days of the entry of judgment is treated as a motion to alter or amend the judgment under Rule 59(e), and a motion filed more than ten days after the entry of judgment is considered a motion seeking relief from judgment under Rule 60(b). McMillian v. Dist. of Columbia, 233 F.R.D. 179, 179 n.1 (D.D.C. 2005). The court entered its order dismissing the plaintiffs' case on July 17, 2006, and the plaintiffs moved for reconsideration on

August 1, 2006. Excluding holidays and weekends per Federal Rule of Civil Procedure 6(a), the plaintiffs' motion for reconsideration was filed eleven days after the court entered its order. Although Rule 6(e) grants litigants an extra three days to account for service by mail, FED. R. CIV. P. 6(e), Rule 6(e)'s three-day extension of time does not apply to Rule 59(e) motions Albright v. Virtue, 273 F.3d 564, 570-71 (3d Cir. 2001) (concluding that the time for filing a motion for reconsideration under Rule 59(e) cannot be enlarged by Rule 6(e)). Because the plaintiffs filed their motion eleven days after the court's entry of judgment and because Rule 6(e)'s three-day extension of time is inapplicable in the present context, the court analyzes

the motion under Rule 60(b).

II. BACKGROUND

A. Factual Background

This case grows out of a heated property dispute between neighbors in Steamboat, Colorado. Sieverding v. Am. Bar Ass'n et al., Civil Action No. 05-1283, slip op. at 2 (D.D.C. July 17, 2006). In 1992, the Bennett family erected a fence around their property that claimed part of a road adjacent to the plaintiffs' home. Id. The plaintiffs objected to what they perceived as zoning violations and tensions between the families escalated, culminating in the issuance of a restraining order against Kay Sieverding. Id. The plaintiffs have brought suits challenging the restraining order in at least two state court actions and numerous federal court actions. Id. at 3. In their suit in the United States District Court for the District of Colorado before Magistrate Judge Schlatter, the plaintiffs brought suit against all the defendants party to this case. Id. After a painstakingly thorough review of the plaintiffs' "verbose, prolix, and impossible to understand" complaint, 2 Magistrate Judge Schlatter recommended that the court sanction the plaintiffs, dismiss the case with prejudice, and enjoin the plaintiffs from further litigating issues based on the transactions or series of transactions underlying the case, unless represented by counsel. Id. Judge Nottingham of the district court adopted Magistrate Schlatter's recommendations in full. Id. The Tenth Circuit Court of Appeals affirmed the district court's order. Sieverding v. Colo. Bar Ass'n, 2005 WL 928748, at * 1 (10th Cir. Apr. 22, 2005) (un-

published opinion).

Ignoring Judge Nottingham's injunction and the Tenth Circuit's decision affirming the injunction, the plaintiffs have filed suits in numerous courts across the nation, in some cases filing multiple suits in the same court.3 Def. White & Case's Mot. to Dismiss at 3. On September 2, 2005, Judge Nottingham held plaintiff Kay Sieverding in contempt of his order enjoining further litigation without assistance of counsel and remanded her to the custody of the U.S. Marshall. Id. at 4. During her incarceration for contempt of court, the plaintiffs filed the instant suit alleging that the defendants engaged in a conspiracy to jail plaintiff Kay Sieverding.

B. Procedural Background

On June 27, 2005, the plaintiffs brought an independent action in this court to set aside the Routt County Court and district court of Colorado judgments on the basis of fraud.

Sieverding, Civil Action No. 05-1283, slip op. at 1 n.1. This court dismissed that complaint on July 17, 2006, concluding that the Tenth Circuit's ruling had a res judicata effect. In their current complaint, the plaintiffs allege that the defendants conspired with Judge Nottingham in Colorado. Compl. at 1. Because this court's decision in Civil Action No. 05-1283 has a res judicata effect, the court sua sponte dismissed the plaintiffs' complaint on July 20, 2006. The plaintiffs now move for reconsideration of the court's dismissal, arguing that the current complaint is not related to the complaint in Civil Action No. 05-1283.

III. ANALYSIS

A. Legal Standard for Relief Under Federal Rule of Civil Procedure 60(b)

In its discretion, the court may relieve a party from an otherwise final judgment pursuant to any one of six reasons set forth in Rule 60(b). FED. R. CIV. P. 60(b); Lepkowski v. Dep't of Treasury, 804 F.2d 1310, 1311-12 (D.C. Cir. 1986). First, the court may grant relief from a judgment involving "mistake, inadvertence, surprise, or excusable neglect." FED. R. CIV. P.60(b). Such relief under Rule 60(b) turns on equitable factors, notably whether any neglect was excusable. Pioneer Inv. Servs. Co. v. Brunswick Ass'n Ltd. P'ship, 507 U.S. 380, 392 (1993).

Second, the court may grant relief where there is "newly discovered evidence" that the moving party could not have discovered through its exercise of due diligence. FED. R. CIV. P. 60(b). Third, the court may set aside a final judgment for fraud, misrepresentation, or other misconduct by an adverse party. Id.; Mayfair Extension, Inc. v. Magee, 241 F.2d 453, 454 (D.C. Cir. 1957). Specifically, the movant must show that "such 'fraud' prevented him from fully and fairly presenting his case," and that "the fraud is attributable to the party or, at least, to counsel." Richardson v. Nat'l R.R. Passenger Corp., 150 F.R.D. 1, 7 (D.D.C. 1993) (Sporkin, J.) (citations omitted). Fourth, the court may grant relief where the judgment is "void." FED. R. CIV. P. 60(b). A judgment may be void if the court lacked personal or subject-matter jurisdiction in the case, acted in a manner inconsistent with due process, or proceeded beyond the powers granted to it

by law. Eberhardt v. Integrated Design & Constr., Inc., 167 F.3d 861, 871 (4th Cir. 1999). Fifth, the court may grant relief if the "judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed . . . or it is no longer equitable that the judgment should have prospective application." FED. R. CIV. P. 60(b); Twelve John Does v. District of Columbia, 841 F.2d 1133, 1138 (D.C. Cir. 1988) (noting that not all judgments having continuing consequences are "prospective" for the purposes of Rule 60(b)). Sixth, the court may grant relief from a judgment for "any . . . reason justifying [such] relief." FED. R. CIV. P. 60(b). Using this final catch-all reason sparingly, courts apply it only in "extraordinary circumstances." Pioneer Inv. Servs., 507 U.S. at 393.

A party proceeding under one of the first three reasons must file his Rule 60(b) motion within one year after the judgment at issue. FED. R. CIV. P. 60(b). A party relying on one of the remaining three reasons may file his Rule 60(b) motion within a reasonable time. Id. The party seeking relief from a judgment bears the burden of demonstrating that he satisfies the prerequisites for such relief. McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc., 298 F.3d 586, 592 (6th Cir. 2002).

B. The Court Denies the Plaintiffs' Motion for Relief from Judgment On July 20, 2006, the court dismissed the plaintiffs' claims in the instant case, reasoning that the claims were barred by res judicata because they arose from the same set of events as alleged in Civil Action No. 05-1283. Mem. Op. at 2. The plaintiffs' three complaints in this court charge, pursuant to different legal theories, that officers of the Routt County

Court and the District Court of Colorado conspired to deprive them of their civil rights in connection with their property dispute with the Bennetts. The plaintiffs argue that the court's judgment is based on a mistaken interpretation of the facts because "none of the related lawsuits had claims for jailing." Pl.'s Mot. for Recons. at 1.

The complaint in the instant action alleges that the defendants conspired with Judge Nottingham to force the plaintiffs to "surrender their property rights." Compl. at 1. The complaint also alleges that the defendants have engaged in "wrongful imprisonment" Id. at 23. The complaint in Civil Action No. 05-1283 alleges that the defendants conspired with the U.S. District Court in Colorado, that they have engaged in "malicious prosecution," and that they have attempted to have the plaintiffs jailed for contempt. Am. Compl. (Civ. Action. No. 05-2122) at 6, 36. In other words, after the plaintiffs filed Civil Action No. 05-1283, alleging that the defendants were attempting to have the plaintiffs jailed for contempt, Judge Nottingham held plaintiff Kay Sieverding in contempt and remanded her to custody. The plaintiffs then filed the instant action.

The court's decision to dismiss Civil Action No. 05-1283 has a res judicata effect on this action because res judicata "prevents the relitigation of any issue that was raised and decided in a prior action." I.A.M. Nat'l Pension Fund v. Indus. Gear Mfg. Co., 723 F.2d 944, 949 (D.C. Cir. 1983). In Civil Action No. 05-1283, this court dismissed the plaintiffs' challenge to the validity of Judge Nottingham's order enjoining the plaintiffs from filing further pro se lawsuits. This court's dis-

missal of Civil Action No. 05-1283 has a res judicata effect on the instant suit because this suit also challenges Judge Nottingham's ability to impose his March 19, 2004 order in the first place. Compl. at 4 (stating that "the right to sue is sacred"). Further, Judge Nottingham's decision to hold plaintiff Kay Sieverding in contempt of his order is nothing more than an exercise of his power to enforce compliance with the order challenged by the plaintiffs. Spallone v. United States, 493 U.S. 265, 276 (1990). Because the instant complaint, like the complaint in Civil Action 05-1283, is essentially a challenge to Judge Nottingham's March 19, 2004 order enjoining the plaintiffs from filing further pro se lawsuits, the court's dismissal of Civil Action No. 05-1283 precludes the present lawsuit. Assuming arguendo that the court's decision in Civil Action 05-1283 does not have a preclusive effect on this case because it asserts new claims, the court would nevertheless dismiss the suit because plaintiff Kay Sieverding has already litigated her "claims for jailing" before Judge Nottingham. On October 5, 2005, plaintiff Kay Sieverding filed a motion in the Colorado action alleging obstruction of justice, conspiracy, intimidation, and threats with respect to the contempt proceedings. See Kay Sieverding's Mot. for Special Prosecutor, Civil Action 05-1950 (Docket No. 609). Judge Nottingham denied the motion on October 18, 2005.

Thus, plaintiff Kay Sieverding chose to challenge Judge Nottingham's decision to hold her in contempt and lost. She may not have a second bite at the juridical apple by filing a complaint based on the same events in this court. Rumber v. Dist.of Columbia, 2005 WL 1903727, at *4 (D.D.C. July 19, 2005) (stating that

once plaintiffs have taken "a first bite at the juridical apple," they "cannot take a second bite simply because they do not like the result of their first"). Because the plaintiffs' complaint in the instant case is barred by res judicata, the court declines to grant the plaintiffs relief from judgment.

Accordingly, it is this 21st day of December, 2006, ORDERED that the plaintiffs' motion for relief from judgment is DENIED; and it is FURTHER ORDERED that the plaintiffs are enjoined from filing any further lawsuits in this court that relate to any of the series of events that occurred in Steamboat Springs, or that form the basis and backdrop for the three cases filed in this court, unless the plaintiffs are represented by counsel.

SO ORDERED.

RICARDO M. URBINA

United States District Judge

Over the past years, the Sieverding family has sought resolution of its perceived grievances through the judiciary. And, the judiciary has addressed all of the claims raised by the plaintiffs and uniformly concluded that the claims are without legal merit. Remarkably, each legal defeat propagates successive lawsuits equally devoid of merit. These lawsuits are nothing more than an "incredibly long walk down a short legal pier." Bradshaw v. Unity Marine Corp., Inc., 147 F. Supp. 2d 668, 672 (S.D. Tex. 2001).

For its part, this court's involvement in these frivolous

cases is finished. Echoing the sentiments expressed by the federal courts in the Tenth Circuit, the court cautions the plaintiffs that this court is not without the same remedies so deftly employed by Judge Nottingham. To be explicit, before filing papers that violate this court's order, the plaintiffs should note that the court has the power to arrange one-way flight accommodations to the D.C. Jail, courtesy of the U.S. Marshal Service. Perhaps the specter of such unpleasantness will deter the plaintiff from engaging in any further meritless [l]ilitigation.

APPENDIX K

Denial of motion to withdraw mandate and instruction not to accept pleadings

(D.C. No. 02-cv-1950-EWN-OES)
(D. Colo.)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
KAY SIEVERDING; David SIEVERDING,
Plaintiffs-Appellants,
and
ED SIEVERDING;
TOM SIEVERDING,
Plaintiffs,
v.
COLORADO BAR ASSOCIATION, AND THEIR INSURANCE COMPANY (TRUE NAME UNKNOWN); CITY OF STEAMBOAT SPRINGS, CO, A MUNICIPALITY (HEREINAFTER THE CITY); AMERICAN BAR ASSOCIATION, AND THEIR INSURANCE COMPANY (TRUE NAME UNKNOWN); JANE BENNETT, PRIVATE CITIZEN ACTING IN CONSPIRACY WITH CITY POLICY MAKERS; KEN BRENNER, INDIVIDUALLY AND IN HIS CAPACITY AS A CITY COUNCIL MEMBER; JAMES ENGLEKEN, INDIVIDUALLY AND IN HIS CAPACITY AS CITY COUNCIL MEMBER; ART FIEBING, INDIVIDUALLY AND AS EMPLOYED AS CITY ASSISTANT CHIEF OF POLICE; SANDY FIEBING, INDIVIDUALLY AND AS THE CITY CODE ENFORCEMENT OFFICER; DANIEL FOOTE, ATTORNEY, INDIVIDUALLY AND IN HIS CAPACITY AS ASSISTANT CITY ATTORNEY; J. D. HAYS, INDIVIDU-

ALLY NO. 06-1439 AND IN CAPACITY AS CITY DIRECTOR OF PUBLIC SAFETY; JAMES "SANDY" HORNER, INDIVIDUALLY AND AS AN ATTORNEY WORKING FOR KLAUZER & TREMAINE AND HIS INSURANCE COMPANY; ANTHONY LETTUNICH, INDIVIDUALLY AND IN CAPACITY AS CITY ATTORNEY AND HIS INSURANCE; PAUL R. MCLIMANS, INDIVIDUALLY AND IN CAPACITY AS A DISTRICT ATTORNEY AND HIS INSURANCE COMPANY; WENDIE SCHULENBURG, ALSO KNOWN AS WENDIE ROONEY, INDIVIDUALLY AND IN CAPACITY AS CITY PLANNING SERVICES DIRECTOR; AND HER INSURANCE; MELINDA SHERMAN, INDIVIDUALLY AND FORMER ASSISTANT CITY ATTORNEY, AND IN CAPACITY, AND THEIR INSURANCE; KERRY ST. JAMES, INDIVIDUALLY AND IN CAPACITY AS DEPUTY OR ASSISTANT DISTRICT ATTORNEY; AND HIS INSURANCE; ARIANTHE STETTNER, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER; PAUL STRONG, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER; AND HIS INSURANCE COMPANY; RICHARD TREMAINE, INDIVIDUALLY AND IN CAPACITY AS AN ATTORNEY; AND HIS INSURANCE COMPANY; JAMES WEBER, INDIVIDUALLY AND IN CAPACITY AS CITY PUBLIC WORKS DIRECTOR; AND HIS INSURANCE COMPANY; P. ELIZABETH WITTEMYER, INDIVIDUALLY AND IN CAPACITY AS DEPUTY DISTRICT ATTORNEY; AND HER INSURANCE; JAMES B.F. OLIPHANT, BENNETT'S ATTORNEY AND PURCHASER OF PLAINTIFF'S HOME; KEVIN BENNETT, INDIVIDUALLY AND IN CAPACITY AS CITY COUNCIL MEMBER; DAVID BROUGHAM, INDIVIDUALLY AND IN CAPACITY AS APPARENT CITY INSURANCE AGENT (FOR CIRSA); KATHY CONNELL, INDIVIDUALLY AND

AS EMPLOYED AS CITY COUNCIL MEMBER; HALL & EVANS, LLC, AND THEIR INSURANCE; KLAUZER & TREMAINE, A LAW FIRM, AND INSURANCE (TRUE NAME UNKNOWN); RANDALL KLAUZER, INDIVIDUALLY AND IN CAPACITY AS AN ATTORNEY AND HIS INSURANCE COMPANY; SUZANNE SCHLICHT, INDIVIDUALLY AND IN CAPACITY AS NEWSPAPER PUBLISHER AND HER INSURANCE; STEAMBOAT PILOT & TODAY NEWSPAPER, (WORLDWEST LIMITED LIABILITY COMPANY) AND INSURANCE (TRUE NAME UNKNOWN),
Defendants-Appellees, and CHARLES LANCE, Attorney, individually and in capacity as former district attorney and his insurance; CIRSA, insurance for the CITY; INSURANCE AGENT, other than Brougham and decision makers for CIRSA (true name unknown); DAVIS, GRAHAM & STUBBS, LLC; JAMES GARRECHT, in capacity as district court judge; (for injunctive relief only since he is immune from suit for damages); PAUL HUGHES, individually and in capacity as CITY manager, Defendants.

ORDER

Filed October 11, 2007

Before BRISCOE, McKAY, and GORSUCH, Circuit Judges.

Ms. Sieverding has submitted for filing two pleadings entitled "Emergency Mandamus Petition" and "2nd Emergency Mandamus Petition." On June 14, 2007, this court issued an order and judgment in this case affirming the district court's order awarding attorney's fees to defendants. Ms. Sieverding sought rehearing, which was denied on July 16, and the mandate is-

sued on July 24. Although Ms. Sieverding styles her submissions as mandamus petitions, these petitions present challenges to the form of this court's order and judgment and to the form and validity of the district court's order awarding attorney's fees. These challenges are untimely as this court's appellate jurisdiction terminated with the issuance of the mandate. See Payne v. Clarendon Nat'l Ins. Co. (In re Sunset Sales, Inc.), 195 F.3d 568, 571 (10th Cir. 1999).

Because Ms. Sieverding is proceeding pro se, however, we must liberally construe her filings. See Cummings v. Evans, 161 F.3d 610, 613 (10th Cir. 1998). Applying this rule, we construe Ms. Sieverding's submissions as motions to recall the mandate. We have the power to recall or modify "a mandate that was procured by fraud or act to prevent an injustice, or to preserve the integrity of the judicial process." Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah,

114 F.3d 1513, 1522 (10th Cir. 1997) (quotation omitted). But that power "is limited and should be exercised only in extraordinary circumstances." Id. Ms. Sieverding has not presented extraordinary circumstances justifying such relief.

The Clerk is directed to accept for filing Ms. Sieverding's motions to recall the mandate. Those motions are DENIED. This case is closed and the Clerk is directed not to accept any additional submissions by Ms. Sieverding in this case.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk